CONTEMPORARY SHARI'AH STRUCTURING FOR THE DEVELOPMENT AND MANAGEMENT OF WAQF ASSETS IN SINGAPORE

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CONTEMPORARY *SHARI'AH* COMPLIANCE STRUCTURING FOR THE DEVELOPMENT AND MANAGEMENT OF *WAQF* ASSETS IN SINGAPORE

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In the name of Allah the most gracious and the most merciful

This journey of pursuing knowledge has taught me its true meaning. I would like to use this quote by Richard Feynman (1918-1988), 'I was born not knowing and have had only a little time to change that here and there.'

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Declaration

This thesis is my own work and has not been previously submitted for consideration for any other degree in this or any other university. Material from published and unpublished work of others is credited to the author(s) in the text.

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Abstract

The institution of *waqf* proves to bring about social, economic and religious benefit to mankind. It is a vehicle for financing society as a whole (Hodgson, 1974). However, of late there has been a pervasive underdevelopment of *waqf* assets in the world (Kahf, 1998; Kuran, 2004). One of the reasons cited by Kuran for this underdevelopment is the issue of perpetuity and the inalienability inherent in the features of *waqf* (2004). The other reason, as cited by Kahf and Cizakca (2000; 1998) is the issue of mismanagement and the nationalisation of *waqf* . However a plethora of reasons can be advanced for the underdevelopment of *waqf* which includes the entire administration, management, financing and development of *waqf*.

This research therefore aims at indentifying factors needed for the contemporary *shari'ah* compliant structuring of *waqf* assets in Singapore and how this can be achieved. The factors and gaps that have been identified include legal, financing, management structure, perception of stakeholders and the *shari'ah* issues in managing the *waqf* assets which form the largest group of assets managed by the Islamic Religious Council of Singapore (Muis).

The research utilised the semi-structured interview of the various stakeholders and expert opinion relating to *waqf*. In addition, secondary sources from the case study analysis of Majlis Ugama Islam Singapura (Muis) provide an important and useful insight in understanding the management of *waqf* in Singapore. The study revealed some interesting findings such as the attitudes towards and the perception of non-*shari'ah* compliant activities carried out in *waqf* management, the possibilities of the various instruments that can be used to develop *waqf* assets and the polar *shari'ah* interpretation of investment and financing of the *waqf* assets. All issues are presented with real case study in this thesis. The research will then conclude by offering the possible new structuring of *waqf* assets using the instruments of Real Estate Investment Trust (REITs) and the various policy changes required to move *waqf* to the next level of its management in order to realise its full potential.

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List of Abbreviations

AMLA – Administration of Muslim Law Act

HDB – Housing and Development Board

IDB – Islamic Development Bank

IRAS – Inland Revenue Authority of Singapore

KAPF – Kuwait Awqaf Public Foundation

MAS – Monetory Authority of Singapore

MUIS – Majlis Ugama Islam Singapura or Islamic Religious Council

Pbuh – peace be upon him

REITs – Real Estate Investment Trusts

SAC – Securities Commission

SSLR – Straits Settlement Law Review

TUCS – Trust Universe Comparison Service

URA – Urban Redevelopment Authority

Glossary of Terms

al- mauqoof	the assets that has been consecrated for waqf.
al- intifa'a	granting of concessions relating to real estate.
al-awlad	the family.
al-salam	the deferred sale.
awqaf	plural for *waqf.*
Bai-tul-mal	treasury/ general endowment fund.
bai-bithamin al-ajil	deferred sale.
dana madrasah	religious education(*madrasah)* fund.
dinar	islamic currency .
diwan al-ahbas	finance department of the endowment (*awqaf*).
diwan al-nafaqat	department which keep all the accounts of the *awqaf.*
faraid	islamic inheritance system.
fatwa	legal opinions/edicts/religious decree.
feddan	an Egyptian unit of land area.
fiqh	Muslims jurisprudence; it covers all aspects of life, religious, political, social or economic.
fuqaha	jurists who give opinion on various issues in the light of the Qur'an and the *Sunnah* and who have thereby led to the development of *fiqh.*
fuqara	the poor.
habs (pl.ahbas)	Muslim philanthropic act or another word for *waqf.*
hadith	a report on the saying, deed or tacit approval of the prophet Muhammad (peace be upon him).
haj	pilgrimage to Mecca. It is the 5th pillar of Islam.
halal	permissible in Islam.
haram	prohibited in Islam.
hijrah	the Muslim calendar year.
hikr	long lease or perpetual lease use for renting or leasing.
hukr	exclusivity or monopoly.
ibadah	worship .
ihtikar	same meaning as *hukr*.
ijarah,	contract of renting;hiring;leasing
ijaratayn	two leases.
ijtihadi	interpretation of the law by the jurist.
infaq	dedication of a specific amount of charity.
inzal	same meaning as *hikr* but term used in Turkey.
isqat	the relinquishing of right.
istibdal	exchange.
istikar	same meaning as *hukr* .

istisna	this is a kind of sale where a commodity is transacted before it comes into existence. Usually used for transaction which is work in progress.
itfa' hakk al-hikr	it is a contract created to circumvent the contract of *hikr*. This contract allows the person or institution to apply to court to get the *hikr* contract dissolve.
jalsa	see *hukr*.
kampong	is a malay word to describe a village.
kharaj	war tax and booties.
khuluww al-intifa'a	a loan contract made to a waqf . Contract commonly used in Egypt for rental of waqf properties.
madrasahs	religious school.
mahram	unmarriageable kin.
majlis fatwa	the religious decree (*fatwa*) council.
maqasid al-shari'ah	goals and objectives of *shari'ah*.
masjids	mosques.
maslahah	problems.
mazhabs	Muslim school of religious jurisprudence.
muammalat	transaction.
mudarib	a working partner; the partner who provides entrepreneurship and management in a mudharabah agreement as distinct from the person who provides the finance.
mudharabah	co-partnersip where at least two parties are involved in a commercial transaction in which one party provides capital, while the other offers skill in carrying out the business successfully in view of sharing the subsequent profits or loss accordingly. This is the Islamic financing technique used by the Islamic financial institution.
mufti	a Sunni Islamic scholar who is the religious head of the organisation.
mujahirun	the people who migrate from Mecca to Medina are called the *Mujahirun* during the time of the prophet.
muqata'a	same meaning as *nasba*. This term is used in Turkey for the same meaning as *hikr* or *hukr*.
murabaha	sale on profit;cost-plus profit;sale at stated cost price and marked up.
manfa'a	benefit.
musharakah	joint partnersip or joint venture. An Islamic financing technique where parties come together for business. Profit is distributed among the partners in pre-determined ratios.
mutawallis	administrators.

muzara'a	sharecropping contract. Contract for the cultivation of land between the owner of the land and the worker with the condition of sharing the produce.
nasba	same meaning of hukr, hikr however this term is used in Turkey.
nazar am	general vow.
nazir	administrator.
nuqud	cash.
qard hassan	a gracious loan /loan extended without charging any fee or interest.
Quran	The Holy book containing the actual words of Allah revealed to the Prophet Muhammad (peace be upon him).
rabbul-mal	investor; owner of capital.
gharar	uncertainty, ambiguity and chance or risk.
riba'	literally means increase, addition, expansion or growth /usury.
sadaqah	charity.
saham wakaf	islamic endowment shares.
sakk	singular of sukuk (certificate).
sayiddina	salutation given to the prophet, his companions and men of high spiritual traditions.
shari'ah	revealed law/ way of life.
sukuk	plural of sakk. Cheque, certificate of debt, certificates of investment.
sukuk al-intifa'a	certificate of rights to the real estate. (in this case a limited rights on the real estate for a limited time period.
tabayu	purchase.
takaful	a scheme of mutual support that provides insurance to individuals.
thawab	rewards in the hereafter.
urf	custom.
vaqf	the Turkish spelling and consonant for *waqf*.
wakaf am	general waqf ; wakaf is the malay consonant for *waqf*.
wakaf khas	specific *waqf*.
wakap	Indonesia consonant for *waqf*.
waqf	islamic endowment.
waqf ahli	family *waqf*.
waqf irsyod	*waqf* of land by any corporation, institution, organisation or other bodies according to *shari'ah*.
waqf Khayri	public *waqf*.
waqf muabbad	*waqf* in perpetuity.

waqf musyak	*waqf* of a right on any property which is jointly owned and undivided.
waqf musytarak	consolidation of several *waqf* including *waqf* created by way of *istibdal* and *waqf* shares.
waqf zuhri	family *waqf.*
waqif	the one who created the *waqf.*
welaya	territory.
zakat	obligatory levy on every Muslim who has wealth. greater than the minimum amount called the *'nisab'*.

Chapter 1: Introduction

1.1 The Importance of the Study

The Muslim philanthropic act which is known as *waqf* (pl. *awqaf)* or *habs*[1], is called by some as an Islamic endowment or an inalienable trust. Lev in his book epitomizes *waqf* as the highest form of charity in Islam (Lev, 2005). It is a pious endowment which dates back as far as Islam.

Waqf is a superior and ingenious institution providing a social and economic system to the Muslim community. It is a system where capital is bequeathed and locked in perpetuity while the income stream from the capital promises a perpetual income flow for the beneficiaries. The pertinent and unique nature of permanency and perpetuity inherent in *waqf* and the perpetual usufruct create a very superior philanthropic instrument complementing other charitable instruments in Islam such as *zakat*[2] (tax on wealth) and *sadaqah*[3] (voluntary alms). However, this very characteristic has hampered the growth of *awqaf* in many countries around the world as claimed by Khaf and Kuran(1998; 2004), despite the glorious past of the waqf system.

There is an abundance of emphasis in the Quran and in the *hadith* (the sayings of the prophet) where helping the community and doing good is synonymous with Islam. There are, however, no direct verses in the Quran mentioning the act of *waqf*. The concept of *waqf* is derived from the *hadith*, or traditions of the Prophet Muhammad (pbuh)[4] (Bearman, 2003; Mahamood, 2006). The famously cited origin of the creation of *waqf* is a *hadith* recorded by Sahih Bukhari when Sayidinna Umar (s.a.), the second caliph of the Prophet, came to the Prophet Muhammad (pbuh), to ask advice about his best land in Khaybar, which he wanted to give to Allah (*s.w.t.*). Prophet Muhammad (pbuh) said that the best charitable act is to devote your best property to Allah and he had explained how the *waqf* should be done and organised; that is to confine the capital and the benefits derived from the land which is the fruits

[1] Habs (plural *ahbas*) is used among the Malikis in North and West Africa, Morocco, Algeria and Tunis.
[2] *Zakat* is tax on wealth and it is the 3rd pillar of Islam. See Qardawi Yusuf on *Hukum Zakat*
[3] *Sadaqah* (plural *sadaqat*) is voluntary alms. The obligatory *sadaqah* is called *zakat*. Other spelling used by Encyclopaedia of Islam is *Sadaqah*. See detailed meanings in Encyclopaedia of Islam, Second Edition, Brill online. Acessed via http: www.brillonline.nl.ezphost.dur.ac.uk on 12 April 2010
[4] The abbreviation *pbuh* means *peace be upon him*, an extension of prayer to him every time the prophet's name is mentioned.

to be given to the people to benefit from (Bearman, 2003; Bukhari, 1996: 576; T.-U. Rahman, 1980: 39)[5]. Accordingly, the property should be permanently alienated and the income given in perpetuity. It should be noted that from such traditions, the law on *waqf* was derived and by the third century the legal institution of *waqf* had been formed (Hennigan, 2004). The current Muslims jurisprudence (*fiqh*) practised by the *waqf* administrators all over the world stems from the traditions and various schools of thought (*mazhabs*) and the laws of *waqf*. From the *hadith*, it shows that *Sayiddina* Umar bequeathed his best land.

Due to this tradition, it can be observed that most of *waqf* land and properties all over the world represent properties which are of high value either in terms of their location or their productive value. It should be noted that the evidence of the many historical and centrally located *waqf* around the world with their prime location and assets of the highest value further shows the supremacy of *waqf*. Testimony to this even in minority Muslim community is shown by the fact that *waqf* constitutes the largest assets value in the total funds managed by Majlis Ugama Islam Singapura (Muis).[6]

The philanthropic act in Islam is propagated and greatly emphasized by the fact that there are 82 injunctions (Qaradawi, 1988: 39) in the Quran which emphasise the acts of *zakat* and charity, which further goes to show that charitable acts are indeed important virtues and obligations of a Muslim. There are also abundant economic tools and instruments from the early days of Islam to reduce the social and economic gap in society. *Waqf* is one such instrument which complements other fiscal, social and economic tools aiming at poverty alleviation, such as *zakat*, *infaq*[7],

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5 See also Ibn Hadjar al-'Askalani, Bulugh al-maram, Cairo n.d.no.784. Sahih al-Bukhari in the Book of Al Wassiya. Sahih Muslim, Kitab Al-Wasiyya, Chapter DCL, pg 867. Extraction from *Sahih* Muslims narration 4006, Ibn' Umar reported: '*Umar acquired a land at Khaibar. He came to Allah's messenger; I have acquired land in Khaibar. I have never acquired property more valuable for me than this, so what do you command me to do with it? Thereupon he (Allah's Apostle) said : If you like you may keep the corpus intact and give its produce as Sadaqa. So ' Umar gave it as Sadaqa declaring that property must not be sold or inherited or given away as gift. So Umar devoted it to the poor to the nearest kin, and to the emancipation of slaves, and in the way of Allah, guests,for travellers,and for kinsmen. The person acting as its administrator could eat from it reasonably and fairly, and could let a friend of his eat from it provided he had no intention of becoming wealthy by its means'.*

6 Muis – Majlis Ugama Islam Singapura or the Islamic Religious Council of Singapore is a Statutory Board created by an act ie the Administration of Muslim Law Act Cap 3. It is a statutory board whose principal function is to oversee the needs of the Muslim community as stipulated in the act. Based on Muis Annual Report for the year 2008 – *waqf* constitutes 63% of Muis total fund.

7 *Infaq* is another form of charity where donor vows to give a defined amount on an almost mandatory periodic basis. For example a Muslim gives *infaq* 10% of his salary for *madrasah* education every month.

charity (*sadaqah)*, *faraid*[8] (Islamic inheritance system) (Muslim, 1985) to help social and economic development in the Muslim community.

While *waqf* is an institution with immense potential for economic and social reform for the community, there has been a pervasive underdevelopment and mismanagement of *waqf* assets in many parts of the world (Kahf, 1998; Kuran, 2001)[9]. The underlying reasons may well be due to many factors: from inefficient management to inflexible legal and *shari'ah* framework in the management and rulings of *waqf*. Some of these factors, such as an over-protection of the *waqf* assets, a dearth of innovative instruments in financing the development of *waqf* and a rigid regulatory framework to generate higher yields from *waqf* assets to gain greater yield have hampered the growth of *waqf*. Nevertheless, it has continued to develop as one of the premier economic systems for the Muslim community.

According to Hodgson, the *waqf* system is the "primary vehicle for financing Islam as a society" (1974: 124). This is true as we can see that there are vast *awqaf* being created in the Middle-East and many other Muslim countries. While there are no exact figures to quantify the asset values of *waqf* around the world, the assets values around the region of the Haram (the vicinity around Masjidil Haram) in Mecca are testimony of how valuable *waqf* assets are. In Iraq alone, while there is no census detailing the value of *waqf*, it is estimated to have an asset worth US$1billion[10] ("The Boston Globe,"", 2003). The Kuwait *Awqaf* Foundation (KAPF) manages more than KD 170 million in liquid assets and there are thousands of mosques and *waqf* properties managed by them (Busharah, 2008). The system of *waqf* can be seen operating in many of the most expensive locations in the world, a world heritage or monument such as Mecca with its ubiquitous Kaa'ba, the Al-Aqsa mosque in Jurusalem, the Imam square in Isfahan, Iran, and many more important sites which are rich in history and situated in some of the most valuable and historical sites in the world. However according to Kuran (2001), *waqf* has become a dysfunctional institution which gave rise to economic underdevelopment in the Muslim countries,

[8] *Faraid* is the Islamic inheritance system. See *Kitab Al-Fara'id* from Sahih Muslim, the book pertaining to the rules of inheritance. In Singapore the rules of inheritance are under the *Shari'ah*h court which issues inheritance certificates and decides on any issues on the distribution of Muslims assets. Information can be accessed through their official website at www.faraid.gov.sg

[9] Monzer Khaf paper on *waqf* and origin, showed the development and decadence of *waqf*.

[10] Reported in the The Boston Globe, July 13, 2003, Sunday, 3rd Edn. "The ***waqf*** produces no annual report of the kind typically available in the United States. But ***waqf*** officials estimate the endowment employs about 10,000 people throughout the country. The bureaucracy is so ponderous and its portfolio so vast that few ministry officials know its value, though estimates usually run in excess of $1 billion"

especially in the Middle East. Therefore while it is a potential economic power house, little has been done to unlock this potential.

While many superior examples of *waqf* are found in the Middle East, in Turkey and other Muslim countries, other small states with minority Muslim communities such as the Republic of Singapore have their own unique history on handling *waqf* and financing the social and religious needs of their societies. Muslims comprise 14%[11] of Singapore's multi-racial and multi- religious community.

This research will draw examples from the *waqf* management, administration and asset development in Singapore. Singapore, a secular state, has a unique legal framework called the Administration of Muslim Law Act (AMLA) to provide for the religious practices of Muslims in Singapore. This Act provides the law on *waqf*, *zakat*, management of mosques, the creation of funds, *halal* certification, *haj* administration and matrimonial and inheritance rulings. The Majlis Ugama Islam Singapura (Muis), or the Islamic Religious Council of Singapore or legally termed as the 'Majlis' was created to oversee such functions. Historically, *waqf* has turned from a simple act of charity to one which is heavily regulated and treated with sacred sanctity. This is why some scholars (Kahf, 1998; Kuran, 2004) claim *waqf* has become stifled. The system mirrors practices which historically originated among the Arab merchants who travelled along the spice route and set roots in Singapore. The early Arab diaspora, mostly from the region of Yemen formed the early settler population which set up the tradition of *waqf* in Singapore. The oldest *waqf* in Singapore, which is that of the mosque of Omar Kg Melaka, was created by the *waqif* known as Syed Omar Bin Omar Bin Aljunied who originated from Hadramaut. The *waqf* which is located in a business district of Singapore was created in 1820 and is still in existence.

Singapore created a historical landmark in the development of *waqf* when it launched its first *musharakah* bond for the development of *waqf* properties in the year 2000. A total amount of $60 million[12] of capital was raised to develop a *waqf* with mixed development. It comprised a mosque, commercial properties and 104 service apartments. The other development was the purchase of a 6-storey commercial property on Beach Road. It was the first *waqf* property at that time to use the capital

[11] Singapore statistic census year 2000 refers to Malay. Almost all Malays are Muslim, for ease of statistical quotation the Malays are Muslim. According to Muis book, Singapore Muslim – there are about 600,000 Muslims in Singapore which comprise the Indian and Chinese as well.
[12] All amount will be quoted in Singapore dollars unless otherwise stated.

market to raise funds for its development. Due to this innovative structuring, Muis, the issuer of the bond, received the prestigious Shaikh Mohammad Al-Makhtoum award in Dubai for creating such an instrument[13] (ST, 2006).

Although there has been a steady increase in the value as well as the return on the capital of the *waqf* assets, there are still many avenues for *waqf* to be innovative in financing as well as asset enhancement programmes, which are still not fully exhausted. Due to the aggressive *waqf* development programmes which Muis has undertaken there is now very little development potential of its current *waqf* properties.

The next milestone in the management of *waqf* for the Majlis is to expand its *waqf* base and seek alternative ways of developing *waqf* on a global basis. Hence the next level of development on the *waqf* horizon is creating new structures, for example in the area of *waqf* REITs or shares to be issued to the public as a new frontier in increasing *waqf* assets. Thus, this research aims at exploring these issues in detail.

1.2 Research Aim

The aim of this research is to explore and analyse the various factors affecting the financing, investment, management and innovation in the development of *waqf* assets. In addition, at the end of the research, it aims to propose a new method of managing, investing and financing these assets. As the aim suggests, the research will unveil various methods of innovative structuring of *waqf* assets as well as an asset enhancement programme in order to maximise yields. However, in proposing these systems, it has to be understood that *waqf* does not operate in a vacuum. It is an institution which embraces other inter-dependency factors which need to be addressed. While maximizing returns and enhancing the value of the assets are pertinent factors, this will not be the ultimate aim as social, moral and religious factors need to be accounted for as *waqf* is a religious act; hence, adherence to the wishes of the *waqif* (the person who created the *waqf*) whose aim is to gain the pleasure of Allah (*s.w.t.*) as paramount importance. It is on this premise that the research will need to be assessed.

[13] Muis Gets Award- Muis one of the 28 award recipients of the Sheikh Mohammed Bin Rashid Al-Makhtoum for significant contribution to Islamic Finance. The used of the *musharakah* bond in financing the development of *waqf* assets was claimed to be one of the pioneer creations in developing *waqf* assets. Straits Times Singapore, ST dated 21 Mar 2006, Page 5.

1.3 Research Objectives

In order to fulfil the identified aims, the following objectives are developed:

(i) Exploring the current management and financing structures in Muis.

(ii) Developing a better understanding of the various legal and *shari'ah* interpretations of the various aspects of *waqf* from the different *fuqaha*, with the objective of creating a more flexible application of *waqf* assets, *waqf* financing techniques and *waqf* investments;

(iii) Proposing changes, improvement or inadequacies in any of the system of *waqf* management and administration, which includes the organisational structure and the corporate governance issue in the management of *waqf*;

(iv) Proposing new financing instrument by using REITs as a financing and management tools of managing *waqf* assets;

(v) Exploring the perceptions of the stakeholders in Muis in relation to the management and financing of the *waqf* assets.

1.4 Research Questions

The instruments currently used in the management and financing of *waqf* have been very traditional, as compared to the conventional assets management system used to manage Trusts. Though, *waqf* management in Singapore has created a few breakthrough recently and is being progressively managed, there is still room for further innovation and improvement. More deliberations and efforts are needed to enhance the valuable assets of the Muslims community. Assets managed via trust instruments and commercial assets have gone through tremendous change over the years to perpetually create new benchmarks for returns. While the nature of *waqf* capital preservation betrays a greater risk-adverse approach, this should not prevent *waqf* funds from yielding greater returns through innovative structuring of its assets.

These are, therefore, pertinent questions posed by the research to achieve its aims and objectives:

(i) What are the factors needed for the successful administration and management of *waqf* assets?

(ii) What are the gaps in the legal framework for managing *waqf*?

(iii) What should be the investment objectives and guideline for *waqf* assets and how will these ensure sustainability of the *waqf* and its beneficiaries?

(iv) What *shari'ah* issues may hamper the growth of *waqf* development?

(v) What are the financing methods used in the financing of *waqf* assets and how is the problem of limited *shari'ah* compliance structure in the development of *waqf as*sets be overcome?

(vi) What are the obstacles faced in structuring *shari'ah* compliant *waqf* assets?

(vii) What are the attitudes of the stakeholders for innovative developments in relation to the management and financing of *waqf* and *waqf* assets?

1.5. Research Scope

While the *waqf* institution is as old as Islam, little progress has been made on the institution of *waqf* until of late. As urbanisation grows, the realisation of its economic potential is much clearer. Most literature has emphasised heavily on its historical and legal structure, little research has been done on the management investments, assets enhancement programmes and the *shari'ah*' structuring of its assets. Since *waqf* assets consist mainly of property, this research will focus more on property development and financing in particular, the feasibility of *waqf*-REITs for structuring *waqf* assets and simultaneously identifying gaps inherent in the management and administration of *waqf* assets to further enhance their potential. As the area to be covered is vast, the investment of cash *waqf* will not be discussed. However, a brief discussion will occur as part of an overall asset investment strategy.

While the research expects to formulate new innovative structures in the field of *waqf*, this is not necessarily new in the field of Islamic investment. However, such an instrument, if it is available in conventional or existing Islamic investment and management of assets, can be applied in the context of *waqf*, which has its own added peculiar legality and framework.

As mentioned earlier, the focus of this research is on *waqf* assets in Singapore. However, it draws some comparisons where applicable from other advanced management of *waqf* systems such as the Kuwait Awqaf Public Foundations (KAPF)[14].

Nevertheless, the research will look at some of the literature reviews to understand the concept of *waqf* and how it will shape the manner in which the investments and the management will take place. Due to the limited literature review,

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[14] Kuwait Awqaf Public foundation (KAPF) is a company under the umbrella of the Ministry of *Waqf* , Kuwait. Information on KAPF can be found at its website; www.awqaf.org/.

some examples from other countries which have made good progress on *waqf* development will be cited.

1.6 Research Design

The research adopts an evaluation and case study approach. In this case, evaluation involves the assessment of the existing strategies and management systems used in the management and development of *waqf* assets. In order for these new concepts, structures and systems to be applied, semi-structured interviews with relevant people were conducted to gauge the applicability and the acceptance of such instruments, definitions and systems. Through feedbacks, the research identifies limitations and other concerns for the instruments proposed to be applied.

In the case study approach, the Singapore *waqf* systems were used to address the issues in the research questions. The interview group comprise different levels of people such as lawyers, government officials, especially Muis as the authority in the management of *waqf* and its subsidiary company, Warees Investments Pte Ltd. Also included are investors, the Muslim public, beneficiaries, the *mutawallis*, and the domain experts on financial and property management who have given further perspective and a broader view of the system that will be suggested.

Relevant authorities were consulted in the collection of secondary data. These data includes the *waqf* investments portfolio as well as reports and published materials of Muis, the government statistical data and other relevant private and public institution published data and resources.

1.7 Outlines of the thesis contents

Subsequently, in the second chapter the thesis will go into a more elaborate definition of *waqf*, its legal and *shari'ah*' interpretations from the different *mazhabs* (school of thoughts) and *fuqaha* (the one who gives religious decree). It also reviews the literature of *waqf*, its essentials and types of *waqf* as well as some *Quranic* injunctions and a very brief history of it so as to correctly understand it. The discourse and differences in the characteristics of *waqf* assets will also be considered in this chapter.

Further the chapter explain factors which validates *waqf*; what can be classified as *waqf* and the legality and *shari'ah*' issues to be complied with. Other issues include the permanent verses temporary nature of *waqf* and some contemporary definitions on the validity of *waqf*.

The different schools of thought have different interpretations on the validity and essentials of *waqf*. Hence understanding these differing essentials will give us a framework on how *waqf* assets can be further developed. The most contentious issues in *waqf* are the permanency and perpetuity issues, the limits on the sale of *awqaf* and the concept of *istibdal*. Views from different scholars are discussed and how these can be applied in the context of structuring the assets based on a legal and *shari'ah* interpretation.

In addition, to bring about more depth to the overall understanding of *waqf*, the chapter looks at what constitutes a valid *waqf* and what are the types of asset that can be '*waqf-able'*. From understanding the underlying assets the chapter then moves to the financial instruments currently used in *waqf* management. Other considerations for the efficient administration of *waqf* in totality are also examined to achieve maximum potential in the development of the *waqf* management. The chapter does not discuss the issues in isolation, but embrace existing *shari'ah*-compliant asset management, legality, accounting and other corporate governance and management issues to which the pioneering scholars of *waqf* have drawn their attention.

In chapter three, a detailed list of financial instruments used in the financing of *waqf* assets is dissected and discussed. Various examples of the different financial instruments used in the financing of *waqf* assets are discussed in greater detail. It also highlights the problems, obstacles and advantages of each of the systems used. In the financing chapter a brief understanding of the instruments of REITs is introduced to give an overall view as to how this instrument works before suggesting at the end of the research how they can work as *waqf*-financing tools.

In the fourth chapter in order to understand the management, administration and development of its *waqf* assets, the example of the Singapore *waqf* is utilised. In other words, the Singapore *waqf* becomes a case study in understanding the detailed intricacies of managing *waqf* from the administrative to the *shari'ah*, legal, financing and investment aspects of *waqf* assets. This chapter also explains the challenges facing the management and administration of *waqf* through historical chronology and the obstacles faced such as the *shari'ah* and legal issues in the development of its *waqf* assets.

While Singapore Muslim embraced the Shafie's school of thought, many of the fatwa decisions concerning *waqf* have focused more on the benefit to the beneficiaries and the *waqf* rather than heeding dogmatic schools of thought. Through this progressive fatwa, and the highly transparent and efficient administration of the Singapore government, *waqf* administration and management in Singapore is first rate. Therefore, in this chapter, the framework for *waqf* administration and management used in Singapore is scrutinised to see if some worthwhile examples can be replicated to achieve greater efficiency in other administrative and corporate governance system.

Further in this chapter, the factors determining the success of *waqf* management and administration is examined. While enhancement of assets is important it is also very crucial that the overall legal and *shari'ah'* framework support this. Is there a need to redesign the management structure of *waqf* to increase its efficiency and governance? It is stated that the corporatisation of the property arms of Muis has given rise to better management of its *waqf* properties and investments. Hence, the organizational structure of many of the *waqf* management that inevitably lead to lack of corporate governance and lack of efficiency because of its structural set up is also examined.

Issues such as whether *waqf* should be centrally managed or decentralized are very much debated by the scholars. Many *waqf* are created by rich philanthropists and their descendants will usually be highly involved in their management. With statutory requirement that the *waqf* be centrally managed many of the descendants and private trustees are opposed to the centrally controlled government institutions. The other issue that will be highlighted will be the economic versus the social priority of the *waqf.* More often than not, there is usually the problem of determining the right ratio for economic gains versus the social and religious benefit of a particular *waqf*. Such questions do arise due to circumstances, which the *waqf* may be obliged to face. With property prices spiralling upwards[15] and with many *waqf* situated in strategic and prime locations, the economic factors cannot be denied (URA; Property Guru 2010). As a result, such *awqaf* have been put through many debates and critical

[15] Property prices has seen an upward trend in Singapore unlike in Europe and America, based on the Urban Redevelopment Authority of Singapore (URA) first quarter of 2010 saw a further increase in all sector of the property market. Accessed through http:\\ ura.gov.sg . Accessed on 26 May 2010. In a similar report by property guru it mentioned that Singapore ranks as world's 17th most expensive location for retail rents. Accessed via http://www.propertyguru.com.sg/news/2010/5/27724/singapore-ranks-as-world-s-17th-most-expensive- dated 26th May 2010.

questioning by the beneficiaries and communities which have a stake in the institution. These are issues that *waqf* needs to deal with when economic decisions are being taken. Many would try to defend the social and religious purpose of the *waqf*, without having much concern for profitability or sustainability.

Chapter five will be the methodology chapter. It will briefly outline the research methods used and why each particular method was adopted. Various options on the advantages and disadvantages of the methods is detailed in this chapter. In view of the subject matter, a semi-structured interview is used in addition to a case study approach which is applied to address the various research questions. The research is further strengthened by data collated from different sources and literature available on *waqf* matters. Interviews are used to further strengthen the different structuring of the asset classes outlined in chapter three. Views are also sought from the government officers, clerics, religious scholars, solicitors, bankers, financial institutions and the trustees or *mutawallis*.

Chapters six and seven showcase the findings from the fieldwork done and from an analysis of the primary and secondary data collected from the casework. The analysis is spread over two chapters covering the three broad theme of the research. It is divided according to the thematic version of the interview conducted.

Chapter six present the findings of the study in relation to the administration and management issues in *waqf*. Chapter seven discusses the investment and financing issues in *waqf* , while the *shari'ah* and legal issues are incorporated in both chapters six and seven. For both analysis chapters, the content analysis approach is used. Interviews will be collated and the data collated be systematically analysed. From the analysis, certain questions are addressed to give a broader perspective of the issues. The analysis also addresses the research questions that have been identified earlier. Many examples of the records from the case study institution are used to analyse the issues raised.

The research then progress to make recommendations and propose a new model based on the research findings. Chapter eight, the penultimate chapter, crystallize the various findings and put together the recommendations which takes into cognizance the various aspects of the work done earlier in the chapter and the various concerns raised by each respondent. In this chapter, the findings are contextualised, and provide policy recommendations for the management of *waqf*. The researcher attempt to make suitable recommendations for the development and management of *waqf* assets that will not only bring better yields but bring greater returns to the beneficiaries without compromising the religious sanctity of *waqf*. It is incumbent upon the administrators of *awqaf* to ensure that it is rightfully managed economically, socially and religiously.

In the last chapter, the researcher then concludes by looking at the challenges that may be faced in carrying out the recommendations presented in Chapter eight. The concluding chapter also discussed what further researches are needed to expand the concept of *waqf* further. Finally, other possible areas that limit the current environment are also explored and can further be developed in future given the many constraints placed for the *waqf* assets.

Chapter 2: *Waqf* - A Literature Study

2.1 Introduction

This chapter will give the necessary background understanding and information on the overall historical, legal, *shari'ah* and administrative background of the institution of *waqf*. In the first part, the chapter will discuss the origin of *waqf* and the different interpretation on the definition of *waqf* in the different schools of thought (*mazhab*) and countries where it is found.

The chapter will then proceed to examine the legal and *shari'ah* framework which governs the administration and management of *waqf*. Here we shall examine the elements which are essential for the validity of *waqf*, applying and comparing the views from the different schools of thought. The most debatable issues among the Islamic scholars are the permanency and/or perpetuity of *waqf*. There are differences in opinion as to whether a *waqf* can have the feature of temporality. This feature is important as it determines the tenure of the assets that will be consecrated for *waqf* and so the various types of asset that can be devoted to a *waqf*. Currently the traditional creation of *waqf* is through the bequest of land which is perpetual in nature. Increasingly, there are more complex and contemporary structures of assets available - the issue arises whether such assets can be used as capital for the *waqf* ?

Besides, the capital[16] issue, it is also important to look at the beneficiaries of the *waqf*. Who can be the beneficiaries of *waqf*? What are the contemporary issues in naming its beneficiaries? In the early centuries, *waqf* was created to secure an income stream for the benefit of the creator's descendants (Hennigan, 2004: xvii; Lev, 2005) which are called *waqf ahli* (*waqf* for the family). However, there are some countries which do not legally recognise the creation of *waqf ahli*. Therefore there is a need to examine the different legal positions of *waqf ahli* in different countries.

Next, the chapter will proceed to look at the creator of the *waqf* that is the *waqif*. What are the factors that invalidate the creator? There are legal and *shari'ah* issues relating to the *waqif* such as the religious status of the *waqif*. It is important to establish a legal and *shari'ah* definition of the *waqif* as this will have implications

[16] Capital here means the corpus of the fund, traditionally the *waqf* corpus has been in the formed of property which is perpetual in nature, however in the Maliki school of thoughts , other forms of assets can also form the corpus such as a computer . The Maliki school has also allowed the *waqf* of the usufruct. Hence a *waqf* can take many forms.

later for the creation of future *waqf* and the eligibility of persons or institution to create a *waqf*.

After looking at the *shari'ah* and legal framework, the chapter will then examine the administration of established *waqf* institutions globally. Here, the different management of *waqf* structures will be looked into and this shall provide a critical study of the establishment of *waqf* institutions. There are many critical reviews of the management of *awqaf* globally which have caused stagnation and mismanagement (Kuran, 2004b) and led us to question the steps to revive the development of *waqf* around the world. The chapter shall mention the initiatives created by the Islamic Development Bank (IDB)[17] and the Kuwait *Awqaf* Public Foundation (KAPF), the world leaders in reviving the institution of *waqf*.

Besides the overall structure and management of *waqf*, the chapter will touch on the role of the *mutawallis* (administrator) and the various style of property management adopted by the early administrators of *waqf* around the world including the issues of tax and accounting principles.

A brief comparison highlighting the differences between a *waqf* and a trust will be presented which will give background understanding of the differences and similarities in order to identify salient features which *waqf* can adopt. Finally, this chapter will illustrate many examples of the contributions made by the institution of *waqf* for Muslim society, particularly in the religious, social and economic area.

2.2 History of *waqf*

There are many versions cited by scholars and historians on the origin of *waqf*. However as cited by Mahamood, the first and official legal creation of the *waqf* institution was that created by 'Umar Ibn al- Khattab', the second caliph of Islam (634-44) in the 7th century AH (Al-Dhnabi, 748H/1985; Mahamood, 2006: 15) as discussed in page one of chapter one.

However there are other scholars who say that the first *waqf* which was the mosque at Madinah was created by the Prophet himself. The land which was

[17] The Islamic Development Bank is an international financial institution established in pursuance of the Declaration of Intent issued by the Conference of Finance Ministers of Muslim Countries held in Jeddah in Dhul Q'adah 1393H, corresponding to December 1973. The Inaugural Meeting of the Board of Governors took place in Rajab 1395H, corresponding to July 1975, and the Bank was formally opened on 15 Shawwal 1395H corresponding to 20October1975. Please check IDB website for more information on IDB. http://www.isdb.org –accessed on 26 Dec 2007

dedicated belonged to the two orphans, named Sahl and Suhayl, from the tribe of Bani Najr. The Prophet initially wanted to purchase the land. However, the orphans did not want to take any money from the Prophet (Bukhari, 1996). This happens to be the first *waqf* mosque that was created. Gil, in his journal, claimed that the first *waqf* should be the land which was given by a Jew who died in the battle of Uhud named Mukayriq (1998). He willed his property to the Prophet and the Prophet thus made the property into a *waqf*. The property consisted of date palms plantations and the usufruct from the land was to be used for the warriors, the Muslims, for the Prophet's family expenses and the remainder for the poor (*fuqara*') of the *Mujahirun* (Gil,1998:125-140).

In this research it is therefore important to understand the manner in which a *waqf* is being created, as it will form the basis in terms of the *shari'ah* interpretation and structure that form the *waqf* we see today.

Over the centuries, the creation of *waqf* has become very pervasive. By the 10th century, the golden era in the civilisation of Islam, saw the proliferation of *waqf* in many of the land, mosques and important institution for the Muslim, Christian and Jewish communities in each state.

2.3 Definition of *Waqf*

Waqf literally means 'stopping', 'binding' or 'keeping' in custody, detaining, closing or imprisoning (Bearman, 2003). There are however no direct injunction from the Quran on *waqf*. The creation of this type of *sadaqah*, is derived from the *hadith* where the Prophet told Umar to make the land at Khaybar as '*habs'* and use it as a *sadaqah* (Bukhari, 1996; Muslim, 1985). According to Gil (1998) "the root word '*habs*'[18] is a synonym for *waqf,* both being used in the same sense as the Hebrew root q-d-sh". Hence what it means is that in the act of *waqf*, the capital in this case being the land, should not be sold, but frozen for giving in the name of Allah; and the income derived from it (the usufruct) should be distributed as *sadaqah*.

While the essence of the definition and understanding of *waqf* is similar in all the *mazhab*s, the interpretation of the essentials of *waqf* may differ slightly. The definition in the Hanafite school of thought, define *waqf* as the permanent dedication of a movable or immovable property for a charitable, pious cause

[18] Mainly used by the Maliki jurist, also known as *hubu*s, or *hub* (French habous) – Encyclopaedia of Islam.

(Rahman,1980:220).[19] In the Administration of Muslim Law Act (AMLA), *waqf* is defined as:

"the permanent dedication by a Muslim *of any movable or immovable property for any purpose recognised by the* Muslim *Law as pious, religious or charitable*."

The legal definition of *waqf* shall be further interpret and analysed in the analysis chapter as the definition will have consequences and implications to the overall development and financing of *waqf*.

2.3.1 Types of *Waqf*

The AMLA further breaks down the *waqf* into 2 types: a general *waqf* or '*wakaf am*'[20], and '*wakaf khas*' or specific *waqf* [21]. These definitions are extracted from the AMLA as follows:

"wakaf am" *means a dedication in perpetuity of the capital and income of property for pious, religious or charitable purposes recognised by the* Muslim *law and the property so dedicated;*

"wakaf khas" *means a dedication in perpetuity of the capital of property for pious, religious or charitable purposes recognised by the* Muslim *law, the income of the property being paid to persons or for purposes specified in the wakaf, and the property so dedicated;*

Notice that the AMLA used the word *wakaf* which is a Malay spelling and consonant for *waqf*. This spelling is used both in Singapore and Malaysia. In Malay, the word *'am'* means general and the word *'khas'* means specific. In Indonesia the *waqf* is also known as *wakap*, and the Ottomans used the word *vaqf*. Following up from the definition, we shall now begin to look at the legal and *shari'ah* framework for the administration of *waqf*.

While there are limited types of *awqaf* defined in Singapore, basically they can be classified as a *waqf* for specific intention, a *waqf* for general charitable causes and a *waqf* for family members, or a mix of all these types. In Malaysia, according to the

[19] According to Imam Abu Haniffa, the *waqif* has the right to revoke the *waqf* while still alive unless he surrenders his right permanently. However, Imam Abu Yusuf differs in his opinion and believes that once a waqf has been dedicated it should be an irrevocable act of charity. This opinion is thus now widely accepted. See comments on this in Muslim, Imam. *Sahih* Muslim (Abdul Hamid Siddiqi, Trans. Vol. 3). Beirut -Lebanon: Dar Al Arabia, pg.867.

[20] *Waqf am* refers to a *waqf* where the beneficiaries are not specifically named, for example a mosque, a madrasah or the poor and needy.

[21] *Waqf khas* refers to a *waqf* where the beneficiaries are specifically named for example Kassim mosque, Madrasah Aljunied or Mr.Ali Bin Abu Bakar.

Selangor Enactment on *Waqf*, there are several types of *waqf* that can be created beside the above categories. These are;

- *Waqf irsyod* - means a *waqf* of land by any corporation, institution, organisation or other bodies according to *shari'ah.*
- *Waqf muabbad* – means *waqf* in perpetuity.
- *Waqf musyak* – means the *waqf* of a right on any property which is jointly owned and undivided.
- *Waqf musytarak* – means consolidation of several *wakaf* including *waqf* created by way of *istibdal* and *waqf* shares.

Although the above definitions are not found in the AMLA, several of the *waqf* that are administered in Muis include some of the categories above. The only palpable difference is that the state of Selangor, Malaysia, allows temporary *waqf* as well. Another interesting way of creating a *waqf* is in the form of a corporation. This condition will be discussed later.

Juxtaposed with the English Trust Act, there are many types of trust that can be created. There are about 14 types of trust, but there is limited scope for the types of *waqf* that can be created.[22] Hence this is one of the testimonies which show that *waqf* has not undergone a revolutionary change to meet the demands of the *waqif* (creator of *waqf*) and the new types of assets which are currently available. The next section will discuss the legal and *shari'ah* framework in the administration and management of *waqf.*

2.4 The legal and *shari'ah* framework for the administration and management of *waqf*.

There are legal and *shari'ah* frameworks that are applicable in the administration and management of *waqf* in Singapore. However there are still some ambiguities found in the various interpretations. The following section will examine this area in more details.

[22] There are many types of trust such as fixed trusts, discretionary trusts, revocable and irrevocable trusts, implied trusts and many more. For more information on the types of trust, visit the website: www.estatesortrusts.co.uk. Accessed on 26th Mar 2010.

2.4.1 The interpretation of the validity of *waqf* by the different *mazhab*.

From the many *waqf* laws and acts, as also in the case of the AMLA above, there are basically three particular conditions in the validity of the creation of *waqf* which needs to be examined. These are:

i) The *waqif* ie the dedicator or creator of *waqf.*

ii) The assets or property dedicated in the *waqf.*

iii) The beneficiaries of the *waqf.*

2.4.1.1 The *waqif* (founder)

I shall first look at the conditions required of a *waqif*. Apart from the condition that the *waqif* must be of sound mind and the owner of the property at that point, there are other differences found in the different *waqf* acts in the different countries concerning the faith of the creator. For example, in Singapore, according to the definition found in the AMLA, the *waqif* must be a Muslim. It is, however, important in the case of Singapore to look at this definition again if it intends to make the *waqf* to scope it to a larger audience which includes the non-Muslim as well. Since Singapore is a secular and Muslim minority state, this change for the inclusion of a non-Muslim, needs careful scrutiny. The condition that the *waqif* must be a Muslim is shared in Sect. 3(l) of the 'Wakf Act 1954'[23], which stipulates that the *waqif* must be a Muslim. The definition extracted from this act is as follows:

> *'Wakf* ', means the permanent dedication by a person professing Islam (or any other person) of any movable or immovable property for any purpose recognised by the Muslim law as religious, pious or charitable."

In contrast to the AMLA, the *waqf* rules of the Kuwait *Awqaf* Public Foundation (KAPF), and the Selangor *waqf* enactment act ("Enakmen Wakaf (Negeri Selangor)," 1999) allows a non-Muslim *waqif* as long as the purpose in the definition of *waqf* is *shari'ah* compliant. In the Selangor *Waqf* Enactment No.7 of 1999, it is very interesting to note that while a *waqif* needs to be a person, the assets can consist of land owned by a corporation, institution or other body ("Enakmen Wakaf (Negeri Selangor)," 1999). However, Islamic law does not recognise a corporation as a *waqif*. Traditional Islamic Law recognises individuals and not corporations or institutions which can create and transact (Kuran, 2004:75). While there is no issue

[23] Handbook of *Wakf* Laws ,4th edn, 1997,Law publishers (India) Pvt. Ltd.

on the creation of a corporation, company or other institutional entity in Islam, there is a gap in the way legal provisions are created in Islamic law. In the case of *waqf*, if the law only recognises a *waqif* as a person, there are instances where there may be the need to provide the corporation or institution to create the entity as a *waqf*. This is an alternative to the creation of companies and other forms of entity. [24]

In the case of a *waqf* in Singapore, the Sultan Mosque was named as the beneficiary by several *awqaf* created by different *waqif*. Over the years, due to the substantial income received by the beneficiaries, the mosque has now been able to purchase its own properties. Since the mosque is an entity, the question arose whether the mosque can create a *waqf*. The definition of *waqf* in the AMLA also stipulates *waqf* as a 'permanent dedication by a Muslim'. Hence the law is silent on whether a person can also constitute an institution or an organisation or a corporation. However, the AMLA is silent on this. Hence in the case of the Sultan Mosque above, there will be no problem reflecting the properties as *waqf*. However, imagine if a corporation wanted to create a *waqf*, then this is where there is a need to establish provision for a corporation to create a *waqf*. The very fact that this can happen will eventually open many doors for corporation to create a foundation or any other social enterprise in the form of a *waqf* rather than in the form of a company.

There is already a case in Turkey where a corporation has created a *waqf*. This is the Vehbi Koc Foundation[25] , a huge conglomerate creating its own *waqf*. The *waqf* specialises in education and finances highly ambitious schools and major university. According to Cizacka a *waqf* can create a company and a company can also create *waqf* as in Vehbi Koc foundation above (Cizakca,2000:95). Hence it is important to understand the implication of the definition provided in the legal structure for the *waqif* to be allowed as a non- Muslim and to expand the definition further to include corporation, institution and other entity. And how all this fits in, in the context of Singapore with its corporate legal and operating environment, hence are there any regulatory changes needed in the creation of a *waqf* from a corporation?

[24] This argument is also similar in the treatment of *Zakat* , where *Zakat* is only imposed on *zakatable* persons that is only the Muslims shareholders in the company. The non-Muslim shareholder are not subject to *zakat*. See computation for *zakat* on business at www.muis.gov.sg or www.*zakat*.com.my.

[25] Vehbi Koç Foundation was established on January 17, 1969 to promote activities in the field of education, health and culture. Vehbi Koç donated the Atatürk Library in Taksim, Istanbul to the Municipality of Istanbul in 1976 and in 1980 opened Turkey's first private museum, the Sadberk Hanim Museum in memory of his deceased wife Sadberk Koç. http://www.kocschool.net/en/homw ; accessed on 24 Mar 2010.

Is there a possibility that a company can be created in the form of a *waqf*? No such creation has been attempted in Singapore, if the comparison is with the set up of Trust, the Vehicle of Business Trust which has stipulated the manner for the setting up of such an entity may need further exploration. This provision is provided in the Business Trust Act.[26] Business trust is taxable under the Singapore Income Tax Act at 10% being the concessionary tax imposed on it.

2.4.1.2 Assets / property (*al – mauqoof*)

In the definition found in the AMLA (1999), the properties that are '*waqf*able' can be in the form of movable or immovable properties. Movable properties are properties such as cash, shares and are non-permanent in nature or, in accounting terms, liquid assets. Elsewhere, immovable properties are fixed assets normally in the form of properties. The legal provision for most of the *waqf* administrators as in the case of KAPF, Cairo, Turkey, Indonesia, Malaysia and in Singapore, allows for cash *waqf*. In KAPF, the provision further stipulates that *al-mauqoof* (the assets) cannot be of a *haram* nature (Zaki, 2006). For example, non-*halal* shares or a *waqf* of wine etc.

Table 2.1 shows the different *waqf* regulations and act in respect to the conditions required on *waqf* assets (*al-mauqoof*).

Table 2.1: Conditions for *al-mauqoof* (assets of *waqf*) in different countries regulation and act.

	India *Waqf* Act 1995	Selangor *Waqf* Enactment Act no.7 of 1999	AMLA Cap 3. (Muis)	Kuwait Awqaf Public Foundation (KAPF)
Ownership of property	The *waqif* must be the owner of the assets that are dedicated as the *al-mauqoof*. Part-ownership is allowed. However the title must be divisible	Owned by the *waqif*	Not mentioned	Not mentioned
Encumbrances or covenant on assets	The assets cannot have any encumbrances such as being mortgage or have not been paid fully.	unrestrained	Not mentioned	Not mentioned
Tangible assets, capable of yielding usufruct	The assets must be known and existing. Cannot be future assets that is intended to be *waqf*.	Capable of yielding any usufruct or benefit	Not mentioned	Not mentioned
Immovable or movable properties	Mentioned in the definition of *waqf*.	Not mentioned	Movable and immovable properties	Not mentioned
***Haram* or *halal* source**	Not mentioned	Not mentioned	Not mentioned	*Mauqoof* must be of halal in nature

[26] Business Trust Act

The few juxtaposition of these acts and regulation show that there are various conditions stipulated in different countries. One of the criteria mentioned is that the assets must be in existence and capable of yielding usufruct. It is therefore interesting to note that this will have implications later when such assets are used for investment purposes. Therefore, what will be the criteria for the investment of *waqf* assets? Can they be in the form of, say, options and other instruments which are not known and which are not asset-backed? It is interesting to note that under Sect. 4(1) of the Trustees Act ("Trustees Act," 1967) investments include those which do not yield income. Therefore, this shows that assets which do not yield usufruct are not pre-requisites in creating a Trust. The law and regulations on the *waqf* assets must be clear and unambiguous on the manner the assets are managed and on the legal position of the *waqf*. The following section will discuss the issues relating to *al-mauqoof*; its form and issues with regard to the different conditions stipulated in Table 2.1.

2.4.1.2.1 Forms of assets

Al-mauqoof can take many forms. These may be:

i) Shares in companies / *waqf* shares (*waqf irsyod*)

In the Selangor *Waqf* Act, as mentioned in an earlier paragraph, the assets can be in the form of a corporation which owns the land ("Enakmen Wakaf (Negeri Selangor)," 1999). Such *waqf* is called *waqf irsyod*. This has been spelt out explicitly to allow the assets to be in the form of a corporation. This provision was necessary as Malaysia has embarked on the *waqf* ownership of property through a corporation. Such purchases have been made by the Johore Corporation where they issued *waqf* shares and the shares were then transferred to purchase companies and properties (Ahmad, 2006). The workings of the *waqf* shares will be discuss in greater detail in Chapter 3.

In the case of Singapore, while there is no provision clearly spelt out in the AMLA, the *waqf* assets that were purchased by Muis at 11 Beach Road which is a 6-storey office building were purchased through a form of company. The company which owned the assets was the Development Bank of Singapore (DBS). Such ownership of property through a company is prevalent as ownership through a company is cheaper due to the lower stamp duty imposed on a company. In addition with high gearing created to own the property, the company is able to reduce its tax expenses significantly as the interest expenses would have reduced the company's net profit. While such *awqaf* have been created by owning shares in a company, there has been an issue as to the recognition of assets where the company has debt reflected in its book. Such transactions will be reflected in detail when the case study is presented in chapter 3.

ii) Temporary versus permanent assets

Many of the *fuqaha* agree that a permanent feature in a *waqf* is a necessary condition for the validity of *waqf* (Mahamood, 2006) . The capital that is bequeathed by the *waqif* should be permanent in nature. There are two issues here; one is on the concept of perpetuity in the creation of the *waqf* the other is on the concept of permanency in the conditions of the assets. The concept of perpetuity on the creation of a *waqf* cannot be denied, as once a person has decided to create a *waqf* for a certain asset, he cannot later revoke it. The revocability issues were argued by Hennigan (2004:95) where he said that, according to him Al-Khassaf distinguished the perpetuity nature of *waqf* with non-eternal bequests and made the distinction between them: a bequest is revocable but this feature is not permissible in a *waqf*. Therefore, perpetuity is here confined to the intention and not the assets. If the *waqf* has a conditional perpetuity in its intention, then the *sadaqah* is not considered a *waqf* as it is limited by time. However permanency in the assets should be separated from perpetuity in intention. For example if the *waqif* consecrates the assets on condition that the *waqf* is created only for a certain period, for example a period of 10 years, then this *waqf* does not meet the perpetuity condition and hence this will not constitute a *waqf*. However if, the *waqif* consecrates the *waqf* in perpetuity, and if the assets which have a useful life of, say, 50 years are bequeathed as *waqf*, this should be a valid *waqf* as the assets can be transformed into cash and thus continue the perpetuity requirement of the particular *waqf*. Therefore in the latter example, the assets are not originally in a permanent form but they can be transformed to permanent assets later through the act of *istibdal* (change of assets form).

Among the schools of thought who uphold the condition of permanency as a mandatory condition for the validity of *waqf*, are the Hanafi (with the exception of Imam Abu Hanifah), the Hanbali, the Shafie and the Zahiri. Among the schools of thought who have refuted the condition of permanency are the Maliki and some of the Shiah jurists.[27] (Rahman, 1980)

Some of the scholars in the field of *waqf* such as Kahf (1998), have advocated the use of temporary *waqf* , as this will allow for a proliferation of *awqaf* in using many of the contemporary assets available. For example, if a person decides to *waqf* a set of computers for use in a particular religious school, then the *waqf* is valid on the useful life of the computers for 5 years. Another option is that a *waqif* may want to *waqf* the assets for a period of 10 years at the end of which the assets will be returned to him. Kahf (1998) opines that since *waqf* is not an obligatory form of *ibadah* (worship), it is a form of *sadaqah*, naturally then it should be allowed to have the flexibility in the form that it should exist that is whether in its permanent or temporary form.

However the majority of Islamic jurists insist that permanency is a very important feature of a *waqf* and must prevail. Singapore has adopted this version in its definition. The definition in the AMLA, states that the *waqf* 'shall be a permanent dedication', which in essence does not mean that the assets must be permanent in features. It is important that the dedication should be permanent, as this will distinguish it from other types of *sadaqah* (Hennigan, 2004: 93; Kahf, 2007a). A temporary *waqf*, may lead to complexity in its operational function. If there are no specific boundaries or regulatory framework created. This may further lead to the possible misuse in the manner that the *waqf* assets are utilised and managed.

It is noted that Egyptian law, through Act No.48 of 1946, and Lebanese Law conforms to Imam Malik's view that, if a *waqf* is charitable, then it is valid in both the temporary and the permanent form[28]. In fact for *waqf al-awlad* (family *waqf*), it has sanctioned such *awqaf* to two generations only.

iii) Leasehold assets

Based on the arguments by the different *fuqaha* on the temporality of a *waqf*, Muis, in its *waqf* definition, has stated that a *waqf* needs to have permanent dedication. However, it is not explicit in whether the types of asset need to be permanent in nature as the definition allows for movable and immovable properties.

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[27] Refer to Tanzil's Ur Rahman, analysis of the arguments on the permanent versus the temporary nature of *waqf* among the four *mazhab* in detail see end note Rahman,1981.

[28] The Maliki school only requires that the *waqf* of a mosque to be permanent in nature. It cannot be changed nor be transferred.

Most of the new mosques in Muis portfolio were built on a 99-year lease. The land tenure for a religious site has been designated by the land authority to be 99-years lease only. According to the fatwa of Majlis, for a 'mosque' to be declared a mosque it must reflect the recognisable features of a waqf, meaning the mosque must be situated on land where there is permanency. However, there is no freehold land being designated for religious site, then in this case it is therefore permissible for the mosque to be consecrated as a *waqf*.[29] However, for a *waqf* property, the condition is that the property which is earmarked for purchase must have a freehold tenure. It is interesting to note that while such criteria or condition are spelt out for properties, the same cannot be applied in the case of movable properties such as cash, shares and other cash equivalent instruments. Hence in *waqf* regulations of KAPF, there is no mention of a property which has to be in a freehold basis.

In this instance, can the *shari'ah* argument for a leasehold property be applied in the same manner as a cash *waqf* where there is no element of permanency in the asset? While in a cash *waqf* the capital is kept intact and the capital should not be eroded over time, the same is not applicable to a leasehold property. In a leasehold property, there will be a yearly depreciation attributed to the property; the value of the leasehold property will diminish over time. Hence, when assessing the capital value of the *waqf*, the capital will be shown as diminishing in value. Therefore there will be the issue of how long capital can be recognised as *waqf*. If a leasehold tenure of property is applied here, (which is in line with the view of Imam Maliki and some of Shiah jurist), then the problem is that while it may not be permanent, the value of its asset will be diminished. Hence the *waqf* life will be limited by the duration of the lease of the land. Even that is arguable according to Mandaville. Half of the *waqf* in 1531 in Ankara, Turkey is registered as a cash *waqf* where the permanency of the assets was not challenged (1979: 292). However, Mandaville (1979:293) agreed that the asset or property required to establish the *waqf* should not be diminished in use. Therefore, will such changes in the *shari'ah* interpretation on the permanency of its assets have a place in the context of Singapore? If yes, what then are the implications it has on the current legal status and will it pose any administrative hurdles?

[29] This is based on the fatwa of *dharurah*, and the fact that the fatwa opines that a 99 years lease can last a generation which is considered quite a long period of time.

iv) Movable Assets (cash)

The argument on the permanency of a *waqf* is basically on the fact that a *waqf* must continue to serve its propitiatory offerings for an unlimited period. In the case of the assets, they can be in any form and need not be in the form of land. Movable properties can be in the form of cash. The cash *waqf,* which is a trust fund practised in the Ottoman Empire was approved by the Ottoman court in the 15th century (Çizakça, 2000; Cizakca, 1995; Magda, 2009). The cash *waqf* historically acted as a form of credit for the people. In Turkey, Malaysia, Kuwait, Singapore, India and many other countries there are elements of cash *waqf* in their *waqf* registers. In Singapore, the cash *waqf* exists due to the compensation money received from the land acquired by the authority. Although the properties ceased to exist, the *waqf* entity is still retained and the cash is invested in deposits. For many years the cash is invested in deposits until it is pooled together to purchase a property.

There is two particular *awqaf* in Singapore, the first by the name of *Waqf* Vallibhoy and the second the *Waqf* of MSE Angullia, where the *waqif*s of these *awqaf* had mentioned in their will that the capital of *waqf* they created may be in the form of property or shares. The property bequeathed may be sold and the proceeds from the sale can be exchanged inter alia with shares. Such provisions are very rare. Although the *awqaf* were created in 1920s, the *waqifs* had very long foresight in creating flexible capital on their *waqf.*

In the case of the state of Johor, the authorities have issued '*waqf* shares' (*waqf saham*) (Gadot, 12-14 Sep 2006). These shares are sold to the public at a minimum amount of RM10.00. The money is then used to develop *waqf* properties or purchase or invest in new properties for the benefit of the community. The religious ruling to allow such forms in *waqf* was announced by the *Majlis Akademi Islamiyah* (Islamic Academic Council) on 24 Nov 2005(Gadot, 12-14 Sep 2006).

v) Other forms of assets

Gil (1998), in an article, mentioned that, during the time of the Prophet, for the purpose of battle and in order to provide the necessary equipment and provisions for the army, he called upon the people to donate horses as *habs*, and promised them a favourable future in the hereafter . However, of late, the act of *waqf* does not seem to be very popular, either because it has not been marketed or the administering of such assets now poses a very great challenge. In the case of Singapore, many of the religious institutions such as the mosque and the *madrasahs* have appealed to the community to donate as *waqf* equipment such as computers, furniture and fittings. However, these assets are not being recognised nor recorded as *waqf*, since the definition of *waqf* is a permanent dedication of property, and such gifts do not naturally fit in the description of a *waqf*.

There are other contemporary assets that have not been dealt with and *waqf* has been very traditional in the assets that can be bequeathed as *waqf*. As for the income or usufruct, as reported by Gil (1998), according to him and in one tradition, there are however prohibition to have the income to be converted to *waqf*. However in the KAPF regulations, the usufruct can be converted to *waqf*, if the beneficiaries cease to exist. All income should be distributed as disbursement for general charity. Therefore, arising from the polar decisions taken by different countries and *shari'ah* interpretation in the *waqf* authority, it goes to show that *waqf* is indeed an *ijtihadi* law where different interpretations can arise. Therefore applying the regulation practiced by the KAPF, with the cessation of the beneficiaries, the usufruct can be added to the capital of the *waqf*. The chapter shall now proceed to the third condition that is the beneficiaries.

2.4.1.3 Beneficiaries

Rahman (1980:136) cited Section 207 of the code of Muslim personal law of the Musalman *Waqf* Validating Act 1923. He stated that the purpose of a *waqf* must be religious, charitable or pious recognized under the *Shari'ah*.

This Act is silent on whether a *waqif* can provide income to himself. In the case of KAPF, the regulation states that the *waqif* should not inure the income from the *waqf* to himself. However it discloses that there are jurists who approved of such cases. It also stipulates that the benefits shall be continuous. Again there is a disclaimer saying that some jurist approve of such conditions.

We shall look at the historical literature, whether there are instances where the *waqif* can also be a beneficiary of his or her *waqf*. According to several authors, during the time of the Prophet, the *waqf* of Calip Uthman shows he bought the wells in Medina to supply water for the Muslims there, in this instance, the Prophet told him that he could keep the revenue for himself (Gil, 1998; Lev, 2005).

2.4.1.3.1 Who are the beneficiaries?

In the definition found in the AMLA, a *waqf* must be religious, pious and charitable in nature. The beneficiaries, hence indicate the purpose of the creation of the *waqf*: the religious and spiritual consecration of one's asset to Allah, and, thereby create a charity as encouraged by Islam. Hence the beneficiaries who fall under the ambit of these definitions are deemed to have fulfilled the conditions of the *waqf*.

In the early history of *waqf*, the decisions to give to certain beneficiaries are influenced by the injunctions found in the *quran* and the needs of the community. For example, in the Quran[30](4:60) many of the charitable verses are directed at the poor, the needy, the wayfarers, and the orphans. During the time of the Prophet, *awqaf* not only served religious and social functions, such as creating mosques and providing for the poor and needy, but also the public utilities needed by the people. They supplied many public goods by providing roads, transport, and drinking water. According to Boudjella "for centuries the Muslim caliphates and states did not have departments or ministries to take care of public works, roads, bridges, mosques, schools, libraries or hospitals. The yields of the endowment properties were used to cover those public needs" (1998: 4).

Sadeq gave further examples saying that Zubaidah, the wife of Caliph Harun Al-Rashid, made a *waqf* for the purpose of a road from Bahgdad to Mecca (Sadeq, 2002: 140).

2.4.1.3.2 Types of beneficiaries

The types of beneficiaries shall be classified as popularly classified in the field of *waqf* according to the type of *waqf*. There are basically 3 types of beneficiaries;

i) *Waqf Zuhri* – this is for religious purposes; these are for the creation of mosques, *madrasahs*, for the supply of Quran, for performing *haj*.

ii) *Waqf Khayri* – this is for charitable purposes; such as the poor and needy, the destitute, the orphan, the widow, for scholarship, for drinking water, medicine etc.

iii) *Waqf Ahli - For* family members; such as relatives and descendants of the *waqif*.

[30] Quran 4: 60 – *surah at-taubah*, this *surah* is translated to be directed to the act of the obligatory alms or *zakat*. However, the word *sadaqah* has been used in many verses in the Quran.

All these categories of beneficiaries fulfil the definition of 'charitable, religious and pious'. For the charitable purpose, there is no restriction to provide charity to the non-Muslim. This was established during the history of the Prophet. Caliph Umar (a.s) provided drinking water for the people in the cities, roads and bridges, and these were for the use of all the people in the country regardless of their faith (Islahi, 1992/1412H: 373). In Singapore, the *waqf* in the name of *waqf* Sharifah Alsharoff Alsagoff, where the *waqif* has provided medicine for the poor in Singapore, did not specify it to be for Muslims only, but for the poor in general.

In the case of a family *waqf*, as mentioned in the early part of this chapter, the Egyptian law and Bangladeshi law has restricted it to two generations (Rahman, 1980: 149)[31]. In the case of Singapore, there is no stipulated limit on the number of generations for family *waqf* or defined in the AMLA as *waqf khas*. As a result there are problems. Over a few generations, the lineage of family members becomes more complicated and it becomes an enormous task to trace the family members and relatives of the *waqf*. This has posed administrative problems for the managers /*mutawalli* of the *waqf*. In the case of the India *waqf*, in the Musalman *Waqf* Validating Act 1923, if it is a family *waqf* there is no need to register (White, 2006: 7). Similarly, in India, the authority does not regulate family *waqf* and hence it is left in the hands of the descendants or relatives to manage their own affairs.

While many of the beneficiaries in other countries are for the benefits of the local community, in Singapore 20% of the beneficiaries are located overseas.[32] This attributed to the fact that in Singapore, the *waqifs* originated from the diaspora groups of Arabs, Bugis and Indians who set root here in Singapore, where beneficiaries may sometimes be from the *waqif's* origin countries be it for their families or an institution.

In summary, beneficiaries of *waqf* encapsulate a myriad of purposes, as long as they are for charitable, pious and religious causes. However, because of the narrow interpretation of *thawab*[33] ; the beneficiaries in the later centuries are associated with *waqf* that were created mainly for mosques, the poor and the needy. Even in the secular state of Singapore the largest beneficiaries are mosques which accounts for 45% of the annual allocation, followed by *madrasah* and educational purposes which

[31] Under Egyptian law, the longest period for *waqf alal-awlad* is fixed at sixty years after the death of the creator of *waqf*; or to two generations only. Cited from Tanzil-Ur-Rahman pg. 149.
[32] Muis *waqf* disbursements to beneficiaries report for the financial year 2009.
[33] *Thawab* means reward in the hereafter .

are related to religious education[34]. As commented by Islahi, the need for the community to shift its paradigm in looking at the needs of the community is of paramount importance. The Muslim communities all over the world are in dire need of education which is not limited to religious education only. There is therefore a great need to create institutions of higher learning such as universities, hospitals and medical provision for the community (Islahi, 1992/1412H).

2.5 The administration of *waqf* institution

From the time of the Prophet, *waqf* was created by the *waqif* and managed by the *waqif* himself or family members. It has always been a personal charity managed personally without any state or institution intervention (Cizakca,2000:71). Unlike the other charitable institutions from the time of the Prophet, such as *zakat* and other taxes and *kharaj*[35] (war tax and booties) these were managed by the Companions of the Prophet which was called *Bai- tul-mal*.[36] (treasury) . The management of *awqaf* was established by the second caliph, Umar b. Khattab. He created an institution named *diwan al-nafaqat* a department which kept all the accounts of the *awqaf*. By the 2nd century after *Hijrah*, a second department called *diwan al-ahbas* was established and was supervise under the Chief of Justice (Islahi, 1992/1412H: 378). However, through centuries, *awqaf* were created by rich, wealthy, prominent people in the community. Over the centuries because these *awqaf* have covered many land areas in very strategic locations and created many public goods and services, the managements have had to have state intervention due to the sheer size of the *waqf* area and the prominent functions which they play in the society. For example, in 1812-13, according to a land survey in Egypt, 600,000 *feddan* or the equivalent of 0.95 Acre out of 2.5 million *feddan*[37] belong to *waqf* (Toroman, Tuncsiper, & Yilmaz, 2007). This constitutes a massive 24% almost a quarter of the entire land area of

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[34] Refer to chapter 4, allocation to beneficiairies.
[35] *Kharaj* is war booty.
[36] Bait-ul-mal- Prophet Muhammad (pbuh) started the Bait –ul- Mal (a central financial treasury) after the battle of Badar and the first Mosque, Masjid-e-Nabvi (Mosque of Prophet Muhammad), served as the center of collection and distribution for zakat (charitable tax) and sadaqa (additional contributions). During the time of Caliph Umar, the Bait ul Mal became larger and played the role of the public exchequer for the entire Islamic State. Umar then invented new system of salary, welfare etc. For example, the poor or unemployed could get an amount of money from the Bait ul Mal and women who were either pregnant or nursing babies, and had no one else to take care of them, received a monthly stipend from the Bait- ul- Mal. http://*bait-ul-mal*.org/history.html- accessed on 14 Jan 2008
[37] *Feddan* is an Egyptian unit of land area, formerly used throughout the Middle East and North Africa. The feddan equals about 0.42 hectare or 1.038 acre. Accessed through http://www.unc.edu/~rowlett/units/dictF.html

Egypt. The same applied during the Ottoman Empire in 1829, where one-third of the country's land area, which belonged to *waqf*, was expropriated by the government (Kuran, 2001: 849) .[38] In Malaysia it is estimated that there are about 35,000 acres of *waqf* land although 20,000 acres have been surveyed[39] (Ngadimon, 2006). In Singapore alone, in 1885, 25% of the land and real estates belonged to the Arabs and by the 1920's they owned 80% of the large estates including the well-known Raffles Hotel and Hotel Europe (Brown, 2008). A large portion of this land was bequeathed as *waqf*, but due to the nationalisation programmes undertaken during the 1970s, a large part of the *waqf* and Arab Muslims land was acquired (Brown, 2008)[40].

2.5.1 Mutawallis/Administrator of *waqf*

Due to the sheer size of the *waqf* assets and the prominence it plays in supplying public goods as well as many other social functions in the particular country, many of the *waqf* institutions have now evolved to being managed by a *mutawallis* or state-owned *waqf* organisation. For example Cizakca, mentioned that in 369 A.H, under the Fatimid Caliph Al-Muizz, *waqf* assets were centralised and handed to the public treasury called *Bait-ul-mal* (taken from Lambton,1991:27-28).

In the early history of Islam, the *waqf* administrators were traditionally Imams (religious head). Shaikh Al- Azhar was a *nazir* (administrator) for 32 *awqaf* in 1953 (Baer, 1997: 287). The Al-Dajani family were the traditional administrators of the *waqf* of the apostle Daud (a.s). (Cizakca 2000 citing Baer Gabriel,1958). For the family *waqf* traditionally the family members will be its administrators.

In Kuwait, the Ministry of *Waqf* has created an entity in the management of *waqf*. Kuwait *Awqaf* Public Foundation (KAPF) is an independent governmental body which administers all aspects of *waqf* in Kuwait from investing and managing the assets, administering the deeds, to training and educating the public on *waqf*

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[38] Please see Timur Kuran's account on the statistics of other countries such as Algeria, Tunisia, Iran and Egypt where a large part of the land area is owned by *waqf*.

[39] Paper presented on 'Konvesyen *Waqf* Kebangsaan at the Kuala Lumpur, Malaysia on 12-14 Sep 2006, organised by the Department of Wakaf,Zakat dan Haji, Prime Minister's Office, Malaysia. Based on latest website of the Department's statistics, only 11,515 hectares have been reported by 7 states in Malaysia. They are still updating the *waqf* land area as at 25 Mar 2010. Accessed on 25 Mar 2010 at www.jawhar.gov.my.

[40] The ratio of private to state ownership declined from 50% to 20% by 1970s extracted from research paper of Brown, Rajeswary Ampalavanar. Brown, Rajeswary Ampalavanar. (2008). IslamicEndowments and the Land Economy in Singapore- the Genesis of an Ethical Capitalism". *South East Asian Research, 16*(3), 343-403. List of waqf land under acquisition see Muis Annual Report, 1998.

matters. The KAPF was established pursuant to the Amiri Decree#257/1993 issued on 13 Nov 1993. In most Muslim countries, *awqaf* are centralised and the authority on *waqf* matters lies with the state which is regulated through specific *waqf* acts to regulate all matters pertaining thereto (Cizacka, 2000: 71). However, it is noted that in South Africa *waqf* are regulated through a charitable society. The South Africa *Awqaf* Foundation (AwqafSA) has established *waqf* under the South African Law of Trusts.[41] In Iran, *waqf* are administered by the trustees, there is no central ministry regulating matters on *waqf*. In India, since there is no registration needed for *waqf ahli*, this particular type of *waqf* is self managed. Even in minority countries and the secular state Singapore, the *waqf* is vested in Muis (Islamic Religious Council of Singapore). Muis, being a statutory board, is part of a government entity.

The religious and disbursement functions lie with Muis and the administration and development of *waqf* has now been performed by a wholly owned subsidiary company of Muis, Warees Investments Pte Ltd. The company was created in July 2000 with a paid-up capital of $5 million. [42]

In the AMLA, any persons can be appointed to administer the *waqf*, subject to the approval of Muis. However, Muis does provide internal guidelines and ISO processes for the appointment of *mutawallis*. These processes include statutory screening for criminal and bankruptcy records.[43] Other criteria include age and educational background. Extraction of the AMLA on the power of Muis to appoint and remove *Mutawallis* stipulated under Sect. 58(4) and (5) as follows:

'The trustees of the *wakaf* or *nazar am*[44] appointed under the instrument creating, governing or affecting the same shall, subject to the provisions of this Act, manage the *wakaf* or *nazar* am but the *Majlis* shall have power to appoint *mutawallis*, and for such purpose to remove any existing trustees, where it appears to the *Majlis* that —

(a) any *wakaf or nazar am* has been mismanaged;

(b) there are no trustees appointed to the management of the *wakaf* or *nazar am*; or

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[41] www.awqafsa.com, assessed website on 17 Dec 2007
[42] See www.warees.com
[43] Based on Muis internal guidelines on appointment of *Mutawwali* and ISO process documentation for *waqf*.
[44] *Nazar am* means general vow which Muslims made. For example a person vow (nazar) to give a sum of money to the poor and needy if he completed his studies.

(c) it would be otherwise to the advantage of the *wakaf* or *nazar* am to appoint a *mutawalli* '[Amla: 58(4)]

'The *Majlis* may at any time remove any *mutawalli* appointed by it and appoint another in his place.' [Amla: 58(5)]

In the above Act, *Majlis* has the power to remove the *Mutawalli* on the ground of mismanagement. As cited earlier, in the case of several *awqaf* in Singapore, managed by private trustees, the trustees were removed for not complying with the requirement to submit audited accounts of *waqf* Raja Siti Kraeng Chanda Pulih, and the trustee was asked to resign unconditionally and irrevocably through a court order in 2005.[45] While there are provisions to include or remove *mutawallis* for the administration of the *waqf* in Singapore, the same is not applicable in Selangor, Malaysia. According to the Selangor *Waqf* Enactment No.7 1999, the Majlis (Islamic Religious council of Selangor) is the sole trustee of the *waqf* (clause 32). The said act only provides, for a *Waqf* committee and the appointment of a Registrar for the keeping of *awqaf* records.

In Singapore, the faith of the *mutawallis* is not stipulated. This is similar to Sec. 215 on the code of Muslim personal law, which states that "Any person, man or woman, is eligible to the *Mutawalliship* of a *waqf* who is adult and of sound mind, not known to be given to debauchery and immorality, and is trustworthy and capable of carrying on the management, either personally or through an agent" (Rahman, 2007:156). Rahman, commented that any person, either male or female or of any religious faith can be appointed as a *mutawalli* as long as he or she meets the criteria of an adult and of sound mind. The same criteria however does not apply to the KAPF *waqf* regulations, where under regulation no.17, the *mutawalli* or trustee must be a Muslim, because it views non-Muslim as not having any rights in administering the properties of a Muslim (Zaki, 2006). The extracted version states that: "non-Muslims are not to be entrusted with administering Muslims' properties in execution of the principle that there is no *welaya*[46] for a non-Muslim over Muslims." While there are differences in the legal regulations on the appointment of *Mutawallis* in different parts of the countries, Singapore is very flexible in this matter. The *muttawallis* in the Singapore operates in different contexts, these are;

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[45] The originating summon no.1070 of 2003/V, High Court of the Republic of Singapore. In the matter of Sections 58, 59 and 64 of the Administration of Muslim Law Act (Cap.3) dated 23rd October 2003.
[46] Welaya here means legal authority. It originates from the root word wali or witness.

i) A trust company

A trust company called the British Malayan Trustee (BMT)[47] manages 3 of the *waqf*s belonging to the Angullia's family. 2 *awqaf* were surrendered to Muis as there was no property to be managed.

ii) Private trustees or *mutawallis*

Private trustees and *mutawallis*. There are 24 trustees managing their own ancestors *awqaf.*

iii) Private limited company

Warees Investments Pte Ltd is a wholly owned subsidiary of Muis, which manages and develops *waqf*.

With reference to the above, there are different types of administrator in the administration of *waqf* in Singapore. Although the administration of *waqf* in Singapore is now managed by a professional corporatized body, Warees Investments Pte Ltd, about 32% of the *awqaf* are still managed by private trustees. These trustees are descendants or relatives or friends tracing back to the *waqif*. For example, the trustee of *waqf* SMA Alsagoff, the initial trustee mentioned in the will, is one of the forefathers, and before a trustee passes away, the family will appoint through a deed of application of trustees through the court, for the next generation of trustees. While the AMLA, has the power to remove trustees as stipulated in Sect. 54(3), it will not do so without a valid reason, such as incompetent or fraudulent trustees or trustees not complying with the regulations stipulated in the AMLA. While having a descendant appointed as a trustee will have an added advantage in the management of the family *waqf*, it may be a disadvantage in terms of raising capital and managing the complex professional development of the assets to ensure they yield the maximum return from the properties or assets of the *waqf*. There are, therefore, now efforts taken by the privately-run trustees to have a joint effort in the development of *waqf* assets. For example, in the development of *waqf* assets of SMA Alsagoff for the properties of East Coast Road, the trustees have engaged Warees Investments Pte Ltd to do a turnkey project for the *waqf*. Similar arrangements have been made by the *Waqf* of Vallibhoy, where Warees services were sought for the management of its properties. The advantages of getting Warees Investments to do such projects are that Warees,

[47] BMT was incorporated in 1924 in Singapore and is the oldest trust company which is listed on the stock exchange in Singapore. (www.bmtrust.com, web accessed on 20Dec 2007)

being the corporate arm of Muis, is well regulated. It has a wealth of experience in managing *waqf* assets, due to its status and easy access to capital.

It is also interesting to note the unique set up of British Malayan Trustee (BMT). This trust company was set up prior to the establishment of Muis. The *waqif* at that point of time named BMT as their trustee. Even with the advent of AMLA, the trusteeship of BMT still continues. However, the vesting of the assets has now changed to Muis. Having the assets vested in Muis, means trustees need to obtain prior approval from Muis to sell, lease or redevelop the properties. However, this applies only for properties and not to the other liquid assets such as shares, unit trust or bonds.

In many of the Islamic countries, the centralisation of *waqf* has resulted in many *awqaf* being left in a dilapidated state, confiscated or unable to be managed due to their huge size coupled with corruption and mismanagement by the administrators. For example, as cited by Cizakca, in the Ottoman period, the state confiscated the *waqf* revenues and forced them to become loss-making enterprises (Cizakca,2000:72). While over the years we have seen many changes in the development of *waqf*, there is now renewed vigour in its development. The structure managed by KAPF is one to be emulated. There are many other countries which need to build up capacity and, for the smaller non-Islamic state, the need to provide capital is of the utmost importance to revive and sustain the institution of *waqf*. In view of this, the Islamic Development Bank (IDB), Jeddah, has created the World *Waqf* Foundation.[48] This foundation is created to help *waqf* institutions in the world, to help in developing *waqf* assets and to provide technical assistance in managing them.

2.6 Taxation and accounting for *Waqf*

There is very little literature study in terms of the taxation treatment for *waqf*, more so on the accounting treatment of *waqf*. However, this research will not go in depth in this area, but it will be useful to note the environment that *waqf* is operating in and like trust it can be an instrument to avoid tax. During the earlier times, *waqf*

[48] World Waqf Foundation is set up by IDB. Islamic Development Bank (IDB) is an international financial institution established in pursuance of the Declaration of Intent issued by the Conference of Finance Ministers of Muslim Countries held in Jeddah in DhulQ'adah 1393H, corresponding to December 1973. The Inaugural Meeting of the Board of Governors took place in Rajab 1395H, corresponding to July 1975, and the Bank was formally opened on 15 Shawwal 1395H corresponding to 20 October 1975. Please check IDB website for more information on IDB at http://www.isdb.org – accessed on 26 Dec 2007.

was a tool to avoid the acquisition of land and to circumvent inheritance matters and avoid taxation (Cizakca, 2002; Hennigan, 1999). This is because most *awqaf* in many Muslims countries are vested in the state; the same with Muis. It will not be subjected to tax. In order to avoid income tax, the *waqif* can consecrate the *waqf* and then inure the income to himself. In this way the income he receives from the *waqf* can be avoided from being tax at source. However, in the case of Singapore, while the income at the *waqf* level will not be taxable it will be taxable at the individual level. This means income received by the beneficiaries will have to be declared as income of the said person and he or she will be taxed at the individual level. During the mass nationalisation of land in Turkey, *waqf* lands were placed under the state jurisdiction. Therefore it is beneficial for an individual to create a *waqf*; while its land will be kept under the state jurisdiction, the *waqif* can still received perpetual income for him and his beneficiaries. Since *waqf* income does not attract income which is taxable, this is a good source of revenue which is tax free.

2.6.1 Taxation

Waqf in most of the Islamic countries is exempt from tax, be it income tax of the *waqf* or any other related taxes such as property tax and value added taxes. In Turkey according to Murat Cizakca, the state has imposed tax on the income of the *waqf* (Çizakça, 2000) . According to history, for such *waqf*, the revenue generated from the *waqf* is substantial hence it will definitely bring revenue for the state. As a result, the *waqf* are subject to income tax.

However in Singapore, not imposing tax on the *waqf* has only been approved recently. *Waqf* income in Singapore is exempt under Sec.13(1)(e) of the Income tax act.[49] However other forms of taxation are imposed on the *waqf* such as property tax, goods and services tax and income tax on overseas beneficiaries. For beneficiaries, since income from *waqf* needs to be declared as a source of income, the individual may be subject to tax based on the overall computation of his personal income.

It is interesting to note that in Malaysia, anybody who participates in the act of *waqf*, for example through the purchase of *waqf* shares, the amount donated as *waqf* is

[49] Section 13(1)(e) of the income tax act stipulated that the income of any institution, authority, person or fund specified in the First schedule, except dividends received before 1st January 2008 by it from any company in which it holds, at the the time such dividends are declared, more than half of the total number of issued shares of the company unless the Minister otherwise approves; http://statutes.agc.gov.sg Accessed on 1st Sep 2010.

allowed for income tax deduction under Sect. 44 (6) ACP 1967 of Malaysia tax law. This will be a very important factor to ensure the participation of the public in the act of *waqf*. For Singapore, Zakat is currently rated as a tax-deductible item for income tax purposes under Sect. 14 (1) (g) of the Singapore Income Tax Act.[50] Other donations such as giving to a mosque building fund are also tax deductible. In contrast donations to *madrasah* and other religious institutions are not tax deductible.[51]

2.6.2 Accounting for *waqf*

In many countries the compilation of the documents of *waqf* itself presents a humongous task. Crecilius remarked that 'it will take literally an army of men over a period of years' to locate all the documents to ascertain the beneficiaries' allocations for, say, the Al-Azhar mosque in Cairo from the pages of the beneficiaries of the Mamluk Sultans (1971: 270). In Singapore, the *waqf* needs to be presented according to Singapore Accounting Standard and Practices. However, *awqaf* have their own peculiar requirements that need to have their own unique reporting practices. Recently there was a modified financial presentation of *waqf* to show how the segregated initial capital and accumulated funds were treated. Previously, the accounts did not show segregation. As a result it was difficult to ascertain the actual capital and the surplus arising from the *waqf*. This is important because the capital of the *waqf* served as the corpus of the *waqf* which cannot be diminished or eroded. This is to ensure the perpetuity nature of *waqf*. Secondly, the income or usufruct arising from employing the capital, is subject to the disbursements to the beneficiaries. Hence, beneficiaries have the right to demand their income due if this has not been judiciously allocated. While there may be some accounting treatment that can be improved to suit the nature of *waqf* transactions, the more important issue which has not been able to be carried out by many countries is accounting for all *waqf* income and expenditure and allocations to the beneficiaries. More important is to account for the amount that has been remitted to the beneficiaries. The Singapore government's stringent audit and accounting requirement has led Singapore to be one of the *waqf* authorities which is able to publish its accounts on the website. Many *waqf* authorities are still struggling with the task of locating *awqaf* documents and

[50] The tax deductible is less from the chargeable income not as a whole tax rebate which is practised in Malaysia. However for other charitable donations, a double tax relief is given, meaning if an amount of $50 is spend on charity, $100 will be given for the tax relief.
[51] See www.iras.gov.sg for more information on tax allowances and claims.

properties. This is also attributable to the large land areas and the huge records of *waqf* which remain undetected (Cizakca, 1992 /1412H; Crecelius, 1971). Next it is important to look at the differences between a trust and a *waqf* to establish the gaps and similarities to serve as background understanding for the subsequent analysis chapters.

2.7 Differences between a trust and a *waqf* in the Singapore context

Table 2.2 below outlines the differences between a *waqf* and a trust with respect to the Singapore context. It is not an exhaustive list as there are differences in investment criteria, such as it cannot be lease for *haram* sources although such a stipulation is not found in the AMLA provision under the *waqf* section. However, this is known criteria where assets cannot be rented out for non-*halal* sources as well.

Table 2.2 : Differences between Trust and *Waqf* in the Singapore context

Feature	Trust	*Waqf*
1. Purpose	Need not be religious/pious For asset protection/ estate planning / or tax avoidance. Objective for any lawful object.	Must be religious, pious, charitable and must have some kind of benefit within the definition.
2. Corpus /capital/assets	Need not be in real estate Even copyrights can be created as trusts.	Movable or immovable. Predominantly in real estates. Some in stock and shares.
3. Perpetuity	Trust need not be perpetual, irrevocable or inalienable. Trust is against perpetuity. Trust is revocable and hence a vehicle for avoiding probate.	Must be in perpetuity, irrevocable.
4. Beneficiaries status	It is for the benefit of the founder when it is incapable of execution and the property has not been exhausted.	Cypres doctrine is applied once the beneficiaries cannot be applied.
5. Act	Trustee Act	Administration of Muslim law Act (AMLA Cap.3)
6. Creator	The settlor can be of any faith	*Waqif* must be Muslim
7. Vesting powers	Powers vested in trustee. Trustee can charge, mortgage, sell, and lease the assets.	Vesting power in Muis, hence trustee has limited powers, for example trustee cannot purchase or sell properties as title of assets belong to Muis. For any sale or long lease of properties need to get *Fatwa* decision.

Source: Adapted from Rahman (1980: 108) with some additions from author.

2.8 Conclusion

Although there are variations in the interpretation of *waqf* in different countries and different schools of thought, however, most have accepted that a *waqf* is a philanthropic tool which has the distinct feature of having an income stream to provide for the beneficiaries. This chapter had showcased the legal and *shari'ah* perspective and, in addition, discussed the detailed background of how the *waqf* institution operates currently and historically and compares the different countries operations. It has also dissected the various conditions and elements in the creation of *waqf*, discussing the aspect of the assets and the creator. An understanding of the various elements in the characteristics of *waqf*, will form the basis of the arguments in the analysis part of the chapter for proposing changes and recommendations on the various administrations, investments, financing and development tools in managing *waqf* assets.

Interesting area which needs to be explored further is that of a *waqif* being created in the form of a company. This new form of *waqf* can create new entity in the way companies are organised, in the form of a *waqf* institution in which the company or body is created in the form of *waqf*. On the other hand, there are many other types of trust being created under the Trust Act[52], for example revocable and irrevocable trusts. Whether there is future initiatives to expand the types of *waqf* further to incorporate these expanded variations found in trusts will be discussed in the later part of the thesis.

The next chapter will discuss the different methods in financing the development of *waqf* assets and at the same time raise issues relating to the modern financing methods used.

[52] See note 22.

Chapter 3: Financing, Investment and Development of *Waqf* – Literature and Case Study

3.1 Introduction

Chapter two discusses the literature on the legal definition and administration of *waqf*. In this chapter, the literature on financing, investment and development of *waqf* will be discussed. In structuring *waqf* assets, there are several aspects which are unique to the features of *waqf* that need to be considered. Firstly, there are the *shari'ah* requirements – of which there are many aspects from the manner in which the *waqf* assets ought to be managed to the uses to which such assets are put[53]. Secondly, the requirements by the *waqif* (founder) through the injunctions spelt out in the will; some injunctions are considered sacred, while others are deemed to be more flexible and may allow for variations or changes if need be through the *fatwa*, court or simply through the management decision by the *waqf* administrator or authority. Thirdly, there is the law in various countries as well as the *figh* and *shari'ah* issues that the *waqf* needs to comply with. [54] Fourthly, in any development and investment decision, the most important aspect is to have a clear investment policy. For *waqf* assets, this is no exception – mitigating risk and obtaining the desired return is an important criterion that will eventually fulfil the creation of the *waqf* that is to serve the beneficiaries as intended in the will[55]. Hence the whole concept of the development exercise is to create an enhanced net value for the beneficiaries without violating any *shari'ah* rules or trust deeds.

This chapter will highlight some of the various financing tools used in the development of *waqf* assets using traditional and contemporary methods. This chapter will describe the contemporary financing of *waqf* properties using a case-study approach from the examples used by the *waqf* authorities in some countries. Some of the structures which will be dealt with in this chapter will include the financing of real estate through partnership, *musharakah* structures, various *sukuk* structures and the Islamic Real Estate Investment Trust (I- REITs). A literature study to explain the criteria and nature of REITs structure will be presented in this chapter. An attempt will be made to explain the criteria and nature of the REITs structure and

[53] Please refer to the *shari'ah* aspect of *waqf* which has been discussed in Chapter 2 of this research.
[54] In Singapore, besides the AMLA, the *waqf* has to comply with the accounting standards, taxation law and other property and investments law which may not be compatible with *waqf*.
[55] See Nuffield Endowment, how trusts are managed to ensure sustainability. (Nuffield, 5 Mar 2007)

whether such an investment vehicle can be used for *waqf* properties will be discussed in the findings chapter.

Although the bulk of the *waqf* assets are in property, a brief attempt will also be made to discuss the investment of cash *waqf* in this chapter. The natural dominance of real estate as an assets class for *waqf* is because property has the attribute of permanency or perpetuity, the very essence for creating a *waqf*. [56] Cizakca in his findings has shown that the cash *waqf* has proved to withstand the perpetuity test for 70% of the *waqf* created during the Ottoman Empire are still in existence (2000).

While the investment in cash *waqf* has to be carefully invested in order to balance the risk/return profile so that the capital which is sequestered will not be depleted, the same applies for property. However for the real estate class, the challenge is to create superior quality property with good maintenance and usage in order to ensure that the property will be able to provide sustainable rents. In *waqf* investments, the three important factors that need to be addressed are: first, the capital cannot be depleted. Hence capital protection is of paramount importance. Second, there should be a steady stream of income so that the essence of the *waqf* to provide for the beneficiaries will be attained in a consistent manner and, hence, the hope for the *waqif* to get the return for his good deeds (*thawab*) from Allah s.w.t. in a perpetual manner (Abbas, 1990: 123-128) Third, all the investments undertaken should be in the *shari'ah* compliance manner. However, according to Toroman and Tuncsiper et.al quoted from Cizakca (2004:10) during the 18th century in the Ottoman *waqf*, the cash *waqf* gave a 9.4% return from the capital invested and this return was based on interest received from the loan given to individuals from the cash *waqf* corpus. Therefore, during the 18th century a *riba*-based return was also prevalent from the *waqf* capital.

While it is important to maximise returns and provide perpetual income from the capital of the *waqf*, this factor was not demonstrated in many of the *waqf* assets. On the other hand, due to the restrictive factor above; such as shunning non-*shari'ah* activities, and the restrictive nature of waqf such as the alienability issues of land has led to many administrators being less innovative in their investments and

[56] In Singapore, 95% of *waqf* assets are in properties and the rest are in cash which are placed in various financial instruments such as short-term deposits and bonds. However in Kuwait real estate's represents only 52.6% of the *waqf* assets and 41% in the financial sector ie in stock and shares, refer to (Busharah, 2008)

development of *waqf* assets. This is the reason for the low investment return and under-development of many of the *waqf* assets around the world(Çizakça, 2000; Cizakca, 1995).

History has also shown that due to neglect and unstable political decisions on *waqf* assets, many *awqaf* have unfortunately been acquired, confiscated, abolished or destroyed (G. Baer, 1979; Çizakça, 2000; Van Leeuwen, 2006). With the renewed vigour to develop *waqf*, many countries with valuable *waqf* assets have realised the potential that *waqf* can bring. This has fortunately led to a paradigm shift in many administrators to be creative in actively managing and developing *waqf* assets[57].

3.2 Financing and development of *waqf* properties

There are several ways and methods of financing *waqf* development historically and in contemporary times. This section will attempt to look at the way *awqaf* were financed traditionally and the new contemporary method of financing complex *waqf* structure and development.

3.3 Traditional modes of financing *waqf*

3.3.1 *Hikr* or *hukr*

This is a long lease or lease in perpetuity given to the tenant. In return the tenant needs to maintain the property, building on it or cultivating it. Any structure that is built on the land with the permission of the trustee belongs to the lessee. It can then be sold and it is inheritable (Sadique, 2007). This kind of lease is useful as it gives the administrator of a dilapidated or unused *waqf* a way to make full benefits of the *waqf* by having the tenant pay for its upkeep and development (Heyneman, 2004). According to Kahf, this mode of financing also allows the administrator to avoid selling the *waqf*, as the trustees are able to sell the property (based on perpetual or long lease) and receive a huge lump sum of money in the form of advance rent (Kahf, 1998). *Hukr* means monopoly or exclusivity. This mode of financing was used in 12th century Egypt and Syria (G. Baer, 2008; Heyneman, 2004). The lessee can also charge a fixed rent or variable rent depending on the value of the property. This same

[57] Kuwait Awqaf Public Foundation for example, has increased its number of *awqaf* from 90 in 1993 to 540 by 2005. Cited from (Busharah, 2008) Presented in the Singapore international awqaf training workshop 19-23 May 2008 at Orchard Park Hotel. Many other *waqf* authorities have also stepped up their efforts in developing their *awqaf*, Malaysia created a *waqf* foundation in 2008 cited by the Department in the Prime Minister's Office – Zakat, Wakaf and Haj Department.

contract is used in different country but is term differently. For example, in Tunisia it is called *inzal* and *nasba*, *muqata'a* in Turkey and *jalsa* in Morocco (Heffening 1934, Baer 1982). *Ihtikar* or *istikar*[58] is also a term used to describe *hukr* (Sadique, 2007). The Hanafi jurist Ibn'Abidin mentioned that the lease should not be less than the market rate. If the lessee refuses to pay the market rate then the lessor has the right to confiscate the structure and rent it to another party. However, the Hanafi jurist has condoned that in cases where there is no lessee who is willing to pay the market rental rate, a lower rate is allowed or a fixed rate is used instead (Sadique, 2007). This type of financing can be found in the historical case in 16th- century Egypt of the *waqf* of Muhammad Bey Abu Al Dhahab where the assumption of *hikr* payment was used (Daniel Crecelius, 1991; R. Leeuwen, 1999). With the advent of the *hikr* payment it has gave rise to the conversion of *waqf* properties into any other features of commercial private property[59]. It is hence a tool to circumvent the restrictive use of *waqf* properties (Daniel Crecelius, 1991).

3.3.2 *Ijaratyn* (dual of *ijarah*)

This is a lease with dual payment. *Ijaratayn* means two lease or two rents. It is a tool whereby tenant can obtain permanent rights to the property. This particular procedure was used during the late Ottoman period in Anatolia in the 16th and 17th centuries, in which time many *awqaf* properties in Instanbul were ravaged by fires (Heyneman, 2004; Sadique, 2007). Due to the destruction the *waqf* revenue suffered. In order to reconstruct the *waqf* properties, the *Ijaratayn* mode of financing was introduced. This particular mode of lease consists of two parts. The first part is a lump sum payment for the construction of the *waqf* property and the second part is a periodic rental on the *waqf* land. It is somewhat similar to *hukr* but the lump sum

[58] These methods are mentioned in Hasan ' Abdullah al- Amin , "al-*Waqf* fi'al-fiqh al-Islami,"in Idarah wa tathmir mumtalakat al-awqaf, Jeddah, IRTI, 1989, p.134 and Nazih Hammad, "Asalib al-istithmar al-awqaf wausus idaratiha," in Nahw dawr tanmawi'li al'wqf, Kuwait Ministry of Awqaf and Islamic Affairs, 1993, p.174. See also Muhammad Amin Ibn Abidin, Radd al-Multar, Bayrut, Dar al- Fikr, 1979 as quoted by Sadique,.M. A. ((2007) Financing *Waqf* Projects. A Study of Past and Modern Structures , *Waqf* Conference South Africa.

[59] In the *Waqf* of Muhammad Bey's as described by Crecelius, he leased his property for 90 years and whoever was the *nazir* (administrator) could extend the lease period provided he paid to renew the lease. The property after 90 years would revert back to the original owner. This is similar to the modern conventional method of the leasehold land where a reversionary interest on leasehold land will apply once the lease expires. Many such cases were used in the financing of *waqf* properties in Singapore as cited by the Islamic Religious Council. Please refer to 1997 Annual Report of the Islamic Religious Council of Singapore under the notes to the Accounts the list of reversionary interest on the properties which have been leased. The list is only available prior to annual report 1997, subsequently the reporting has been removed.

payment must be used for the reconstruction of the *waqf* property itself which gives the lessee the legitimate right to occupy the property on a permanent basis by paying a nominal periodic rent. This right can be transferred to others and is inheritable. The holder of this contract thus becomes the effective owner of the *waqf* property.

3.3.3 *Khuluww*

Khuluww al-intifa was used as a loan made to a *waqf*. It is a contract commonly used in Egypt, Tunisia and Syria in the early 16th century. Like *hikr*, the tenant in this case pays for the renovation or repairs of the premises and in return the tenant can claim some rights on the *waqf* in addition to having a long lease and paying a fixed small rent. In *khuluww*, the administrator can pay back the debt or pay back the expenses that the tenant has incurred on the properties and reverse the rights back to the administrator (Baer, 1979, 2008).

These traditional modes were introduced to fulfil many reasons concerning the management of *waqf* properties. However, with the innovative use of these instruments, the administrator can now circumvent the alienable feature of the *waqf*. Because of the popularity of these instruments, by the end of the 19th century, there were estimated to be 20-25,000[60] *waqf* properties under such long leases. In the 1930s more than 11,000 *hikr*s were administered by the Ministry of *Awqaf* in Egypt. However the rental on *hikr* properties are very much lower than the normal rent. This is understandable given that a lump sum amount has been paid upfront to the administrator as rent. Hence such rent must have been excessively discounted as the tenant had entered into a long term contract. The rental rate of land once it has been designated as *hikr* land is only one-third of its earlier rate. "The *Shari'ah* court has also agreed that the value of *waqf* lands encumbered with *hikr* should be one-third of the value of similar lands free of *hikr*"(Baer, 2008; Zahra, 1940). In 1898, the Egyptian *Awqaf* Administration abolished the act of *hikr*, because the cost of collecting the rent was higher than the amount payable. By 1960, (law no. 92) all *hikr* were to be liquidated and the holder was given the opportunity to buy the property from the *waqf* for three-fifths of its value. In Turkey, *ijaratayn* and *mukata'a*, the equivalent to *hikr* were also liquidated by the Vakiflar Kannu of 5 June 1935. Any

[60] Please see Encyclopaedia of Islam where Baer uses the reference from Madjmu' at al-kararat wa'l-manshurat, Bulak 1899, 236 f. on the number of increases in the *hikr* contracts. Most of the *hikr* contracts are made on *waqf* khayri or public *waqf*.

new contract was prohibited and existing contract should be dissolved. In Iraq, *hikr* and *Ijaratayn* on *waqf* properties were initially abolished by the 1929 Law Of *Waqf* Administration. Due to its ineffectiveness, in 1960 and 1962, new laws called *itfa' hakk al-hikr* were enacted so that administrators or other people concerned could apply to the court to get the said contract dissolved. The court will then fix the value of the property and the shares of the *waqf* and the lessee (Baer, 2008) (Muhammad Shafik al- Ani , Ahkam al- *waqf*, Baghdad 1965, 60, 244-6).

Although such systems have been abolished in the past, increasingly some countries are now allowing them. In the next section, the contemporary mode of financing *waqf* properties of which some are quite similar to the traditional types which were practiced earlier, will be discussed.

3.4 Contemporary modes of financing *waqf*

The constant strive and the recent resurgence to develop and revive the *waqf* properties has led administrators to seek and innovate various methods of financing to develop *waqf* properties all around the world. Internal financing and joint-ventures through the long-lease method listed above are some of the various ways *awqaf* have managed to revive their assets. With better sophisticated *shari'ah* compliance instruments available now, *awqaf* are now able to tap these various sources of financing after suitable modification to suit the nature of *waqf*.

Listed below are some of the tools used for financing *waqf* development with cited case studies.

- Using equity based financing – *musharakah*(joint-venture) and *mudharabah* (profit sharing)
- Using debt based financing – *ijarah, istisna', sukuk*
- Using internal financing such as loan from *bait-ul-mal*, government, or using *waqf* own funds. *Qard Hassan*, *istibdal*

3.4.1 Equity based financing

3.4.1.1 *Musharakah* (joint-venture)

Equity based financing is the popular mode of financing *waqf* assets for the Islamic Religious Council of Singapore. In the earlier days, most *waqf* properties were developed using this mode of financing. Some case study examples of using this mode of financing are discussed below.

3.4.1.1.1 *Musharakah* structure combining the sale and long-lease of *waqf* properties

In the case below, the *musharakah*[61] concept in developing properties is combined with the long-lease (*hukr*) concept in the development of *waqf* Kassim.

i) The *Waqf*

The property is situated in Changi Road, Singapore. It consists of the land belonging to *Waqf* Ahna Mohamed Kassim Bin Ally Mohammed,[62]or known as *Waqf* Kassim. The land consists of a parcel for the mosque, and the rest for colonial shop-houses which are rented out on which the *waqf* receives periodical rents from the lessee. The objective of the *waqf* is to provide income for the Kassim mosque. The mosque is in a dilapidated state and needs major rebuilding to cater to the high density Muslim community in that area.

ii) The development

The development is to erect a new building for the mosque and to redevelop the shop-houses so as to provide income stream to the mosque. However, to have a brand new mosque, the *waqf* needs to raise a sum of around $5 million. To redevelop the shop-houses in order to provide future income for the mosque it needs another $10 million. In total, the *waqf* needs $15 million for the development.

iii) Financing solution

The *waqf* sought an internal financing arrangement with Muis-*Bait-ul-mal*[63]. A *musharakah* arrangement between Muis-*Bait-ul-mal* and the *waqf* was created. The *waqf* provided the land and *Bait-ul-mal* provide the capital and the expertise needed for the development. In order for *Bait-ul-mal* to reap the capital that it has advanced and in order that the *waqf* could repay the sum raised, the idea of erecting maisonette apartments was mooted. For the project to be viable, 40 apartments would need to be developed. The *waqf* is fortunate as it has a substantial land area to make it viable for the mixed development projects to be undertaken.

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[61] A detailed understanding of the *musharakah* concept can be read through in

[62] Wakaf Kassim was created by Ahna Mohamed Kassim Bin Ally Mohammed in 1921. The endowment consists of the lands at Changi Road comprising lots 343-27/34/64/67 Mukim XXVI and a burial ground at Siglap Road comprised of lots 3-1,2,6 and 7 of Mukim XXVII. Ahna Mohamed Kassim passed away on the 31st July, 1935, at the age of 55.

[63] *Bait-ul-mal* is a general endowment fund managed by Majlis Ugama Islam Singapura. The fund is set up as a general purpose fund for the Muslim community in general. See Muis Annual Report on the financial activities and report of *Bait-ul-mal*.

How does the financing work?

The first phase of the development was to provide the necessary financing for the *waqf*. So the commercial transaction for developing the maisonette property was done. The erection of the 40 units of maisonette apartment cost a total of $10 million.

The construction took two years to complete[64]. Before the construction stage there was a long period of negotiation on the compensation amount with the existing tenant to vacate the premises. At that time, the Rent Control Act[65] was still in effect. After a long and costly negotiation all the shop-houses were vacated. It cost more than $1 million in compensation to vacate the tenants. However, due to the buoyant property market, the compensation cost, while substantial, did not affect the prospect of good development potential for the *waqf*. In time all the properties were able to be sold during the construction stage. Upon obtaining the housing developers licence, the property was marketed and all 40 units were sold via a tender system. Total proceeds received from the sale were about $28 million. Only after the full sales proceeds from the sale of the 40 units of the maisonette apartment were received could the development of the mosque and the commercial complex commence. Therefore, by doing this, the *waqf* did not seek external finance in developing them.

The net gain from the development was around $15 million dollars, exactly enough to finance the second phase of the development to build the mosque and the commercial complex and fulfil the requirements needed for the *waqf*.

<u>The musharakah structure for the development</u>

In the above example, the *waqf* and *Bait-ul-mal* came together in joint partnership to develop the area. Muis-*Bait-ul-mal* provided the capital injection of $10 million and the management expertise and the *waqf* provided the capital in terms of the land.

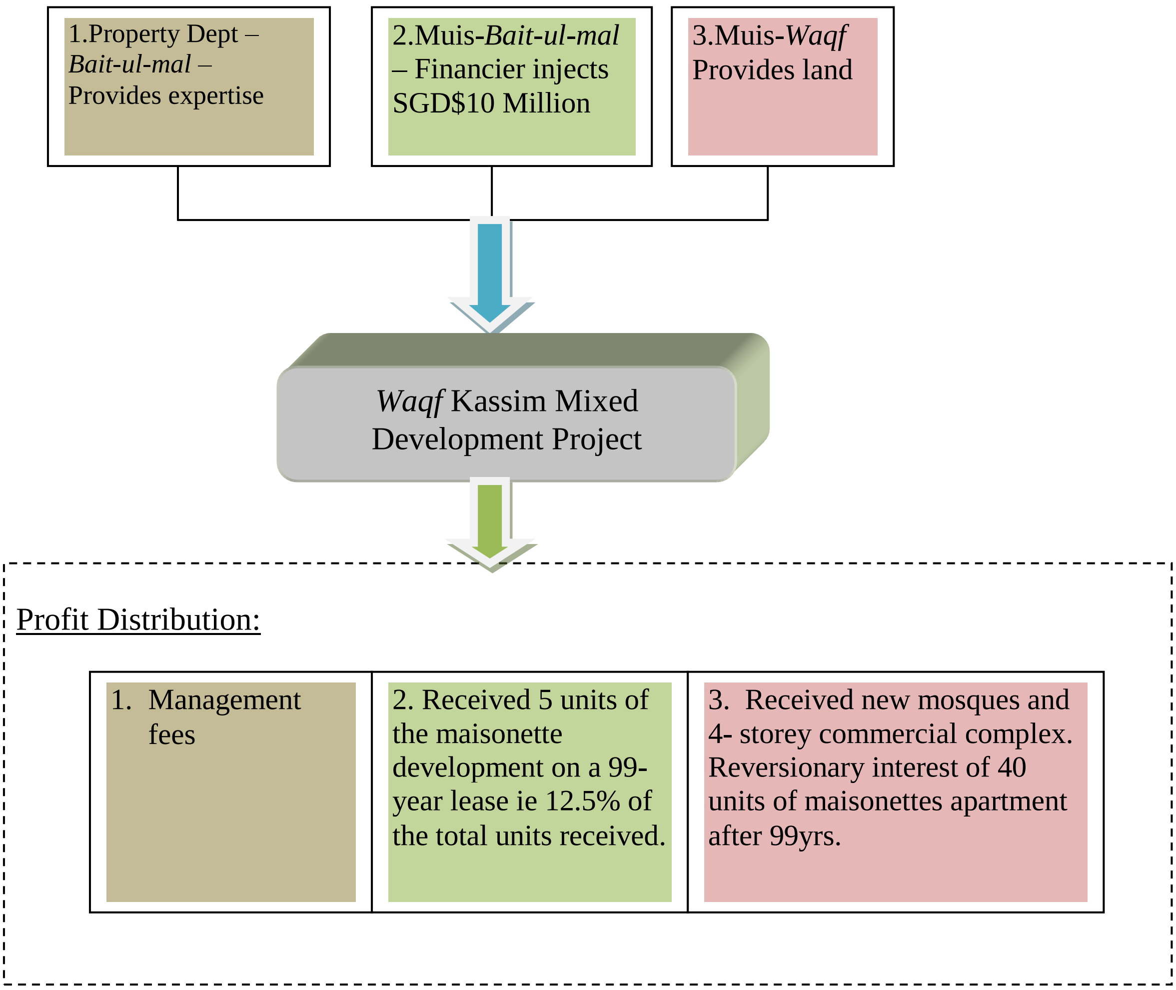
<u>Profit distribution</u>

Muis-*Bait-ul-mal* receives an equivalent amount of 5 units of the maisonette for its managerial expertise and the funds that it provided. The *waqf* gets a brand new

[64] The construction stage started in 1989 and completed in 1991.
[65] Rent Control Act was introduced in Singapore in 1947 by the British. It was created to protect the tenant against a shortage of housing after World War 2. However the rent control has been phased out in stages since 1988. The act has since been repealed on 1st April 2001 under the Control of Rent Act (Cap 58,1985 Edn) . See Singapore statutes at http://statutes.agc.gov.sg. Accessed on 29th Mar 2010. Landlords subsequently can charge market rental for their premises after the rent control act was lifted.

mosque and a new commercial complex to provide sustainable income for the mosque. See Exhibit 3.0 for the *musharakah* structure.

Exhibit 3.0 *Musharakah* structure for *waqf* development in Waqf Kassim



3.4.1.1.2 Issues on the Exhibit 3.0 *musharakah* development transactions

In this case, the *waqf* needed to sell off the parcel of land for the development of the maisonette properties. Although there are some traditional views discussed in the first chapter that *waqf* land cannot be sold[66], in this case a fatwa opinion was sought and permission was based on the fact that in order to sustain the *waqf* 's life, the development was necessary and, in this case, the *waqf* would be better off since the beneficiary, which is the mosque, would continue to provide the religious space for the community. The fatwa was based on the concept of *maslahah*.[67] The property

[66] See chapter 2 on the various opinion on the sale of *waqf* land and the perpetual and perpetuity issues discussed.

[67] *Maslahah* literally means problem therefore in this case the concept that the *waqf* needs to be developed and that development will bring about greater benefits for the *waqf* in the long run.

was sold on a long-lease basis that is on a 99-year lease[68]. The property has a reversionary interest that is after 99 years the title of the property will revert back to its owner.

In the above example, while overall the beneficiary benefits from the development, the total land area of the *waqf* has been reduced. The 40 apartments technically will no longer be assets of the *waqf* for the 99 years of the lease. However, the *waqf* income has increased tremendously. Before the development it was earning a rental of less than $10,000 a month[69]. With the development the rental income is about $300,000 a month[70]. The exponential increase in the rental income overcomes the temporary loss of the land parcel belonging to the *waqf*.

Some *shari'ah* scholars still have a problem with selling *waqf* land on a long-lease basis.[71] The example of the 99-year lease is that it is as good as selling the *waqf* as the leasehold owner can sell and even mortgage the property.[72] The issue is that the property can be sold for an illicit purpose or prohibited usage as no covenant was placed on the property usage. However this can be circumvented by creating a covenant on the properties which are sold on 99-year leases. [73] For this particular example no covenant was spelt out.

However, from the above example, since it is a residential property, the above concerned has very little impact on the usage of the property as it would probably be covered under the residential property law to be used as residential purposes only.

The second issue is that in the *musharakah* structure, profit and loss is shared between the parties concerned. What is the risk being put on the *waqf* land if the project does not work out well? In *waqf* assets, the *waqf* should not be put at risk, as opined by the *Majlis Fatwa* (*Fatwa* Council in Singapore). However, in a joint-venture development, both parties need to take the risk as well. The above example is a related party transaction, so it will not pose any problem for the partnership contract if either of the parties defaults. However, in a more sophisticated financing structure,

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[68] For a 99- year leasehold properties, the lease owner can sell, mortgage and do whatever it wants with the property during the period of the lease.
[69] Amount is based on gross rent , figure is extracted from Muis annual report 1989
[70] Amount is based on gross rent, figures' extracted from Muis annual report 2006
[71] See discussion in chapter 2 on the sale of *waqf* property by different mazhab.
[72] According to Singapore Land Title Act Cap. 157, a property can be registered as a leasehold land as long as the lease period is more than 7 years. It sets the minimum period but not the maximum period. See http://statutes.agc.gov.sg assessed on 1 June 2008.
[73] Covenant for the use of 99 year lease can be spelt out by the owner. However the more restrictive the covenant on the property the more difficult it will be to sell off the property and it will also result in adverse pricing for the properties. Based on legal opinion from local legal firm on Mar 2010.

the *waqf* needs to look at the financing criteria, whether there is a need for the *waqf* to collateralise its assets. If that is the case, the *waqf* will then be placed at risk of losing its properties. The question then is what is the solution of raising finance without collateralising the assets?

In Singapore, since the *Majlis fatwa* does not allow the *waqf* to be put at risk, the solution is that *Bait-ul-mal* will need to be the entity to cushion the risk by guaranteeing to undertake the risks associated with the capital. In a Malaysian *waqf* case, the *waqf* again used the Majlis Agama (the Islamic Religious Body) [74]to take the risks on its behalf.

Therefore additional clauses may be needed to ensure that the *waqf* land is not being put at risk.

3.4.1.2 *Mudharabah* structure

Many other *awqaf* have used the *mudharabah* structure in financing their development. A case in kind is the properties in Upper Dickson Road. The tenant serves as the *rabbul-mal* (capital provider) and provides the capital, and the owner, as the *mudarib* provides the management and development expertise. The tenant provided the refurbishment cost of the properties at $300,000. In return, the owner will get a refurbished property and a discounted rental. This is better than letting the property in a dilapidated state and not being able to earn any rent. The tenant on the other hand received a rent-free period during the construction stage and a 12- year discounted rental. In this way, the tenant was able to hedge the rental rate and also secured a tenancy agreement for the next 12 years. This example of financing has been used by several *awqaf* in Singapore, to circumvent the need to borrow or finance development costs.

Next, debt-based financing using *sukuk*, *istisna* and *ijarah* will be discussed.

3.4.2 Debt – based financing : *Sukuk*

Sukuk[75]is a term used to describe debt certificates or notes. In medieval Islam, such instruments were used for financial obligations in the trading and exchanging of goods(Adam & Thomas, 2004). The first sovereign *sukuk* was issued in September

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[74] See subsequent section on the government involvement by giving interest-free loans from *Bait-ul-mal* money for the development of waqf properties.

[75] The plural for *sukuk* is sakk or sakik. Used for legal financial and commercial purpose such as a document contract of sale, the English origin of cheque. Accessed through http://www.brillonline.nl/subscriber/uid=1522/entry?result_number=1&entry=islam_SIM-8878&search_text=sakk#hit on 9th May 2010.

2001 for the amount of $100 million by the Bahrain Monetory Authority (Rahail, 2008)[76]. Before this, the option of getting fixed income securities by investors was almost non-existent. The difference between a bond and *sukuk* is that in the *sukuk* structure the investors have an undivided beneficial ownership of the underlying assets. They are also entitled to the revenue from the *sukuk.* Although the underlying assets are present, most structures do not reflect the undivided ownership of the underlying assets [77](Rahail, 2008). The fastest growing Islamic instruments saw a record US$97.3 billion of *sukuk* issued in year 2007[78] *Sukuk* also enjoyed a volume increased of 71% year on year[79]. The majority of *sukuk* issuance comes from Malaysia and the Persian Gulf. While *sukuk* are used to raise funds and capital for project financing, it is now gaining popularity with governments issuing sovereign *sukuk* to finance most of their mega projects such as energy, transport and other infrastructure projects. There are many types of *sukuk* such as *musharaka*, *ijarah, mudarabah, murabaha, manfa'a, istisnaa and al-*salam. The most popular types of *sukuk* is *Ijarah sukuk* followed by *musharakah*.[80]

In the field of *waqf*, with many of *waqf* assets being in the form of property, *sukuk* can be one of the more popular choices in financing the development of *waqf*. While traditional modes in the olden days utilised the tools of *hikr* and *ijaratayn*, with the advent of *sukuk* such instruments can accelerate the development of *waqf;* which is needed in many *waqf* institutions. However, to apply the *sukuk* structure, an attempt should be made to understand the structure of *sukuk* and how this can be applied in *waqf* financing. In this chapter we shall discuss two examples of *waqf* financing having used a similar instrument. First, is the Islamic bond called *musharakah* bond, with an issue size of $60 million. It was issued by the Islamic Religious Council of Singapore in year 2000. Second, is the financing of the Zam Zam Towers in Mecca by applying the *sukuk al- intifa'a*. The nascent development of

[76] Other sovereign *sukuk* trails such as the US$600 million Malaysia Global *sukuk-al-ijara* in June 2002, US$700 million *sukuk al–ijara* by Qatar.
[77] For a more detailed information on the difference between *sukuk* , bonds and company shares;please refer to pg. 52 of (Rahail, 2008) Rahail, A. (Ed.). (2008). *Islamic Finance A Practical Guide* (1 ed.): Globe Law and Business Globe Business Publishing Ltd
[78] Source: Bloomberg
[79] Moody's Investors Service - 2007 Review and 2008 Outlook: Islamic Finance., Special Report 25 February 2008.
[80] Please see Moody's investors Service special report on the types of *sukuk*, the volumes and number of *sukuk* issued depicted in a graphical format.

sukuk and the unique nature of *waqf* to be involved in such a structure is an interesting development to pursue.

There are many types of assets which can be financed through *sukuk* which are listed by Auditing and Accounting Organization for Islamic Financial Institution (AAOIFI) in May 2003 which are effective from Jan 2004.[81] In the case of *waqf*, the study will focus on property-based transactions and not other types of *sukuk* such as commodities. Although cultivatable land which belongs to *waqf* can apply the structure of *sukuk muzara'a* the scope of this research will be limited to land which can be developed for commercial, religious or social properties and needs.

The *musharakah* structure for raising capital for *waqf* development and purchases was used by the *waqf* development in Singapore. The next section will explain the mechanics of this structure.

3.4.2.1 *Sukuk musharakah*

The *ijarah sukuk* is the most popular form of *sukuk* as the structure is easy and straightforward. However, over time, the *musharaka sukuk* has become the dominant asset structure by volume having transacted US$12.9 billion. Nevertheless, terms of the number of deals the *ijarah sukuk* is still popular with 54 deals as compared to 22 deals for *musharaka* structures (Moody's International Structured, 2006)[82]. In the financing of the *waqf* development in Muis, the *musharakah sukuk* was used to finance the purchase and development of *waqf* assets while using the *ijarah* concept as well. Muis has all the while used *Bait-ul-mal* or a joint venture with the tenant to develop its *waqf* property without resorting to external financing. The Muis issuance of this *sukuk* proved to be the first case where external financing was sought in developing its *awqaf* properties. Explanation of the structure and a diagrammatic representation of the structure will be discussed in the following section.

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[81] There are 14 types of assets issued by AAOIFI standards to serve as a guideline on the types of asset which can be financed under *sukuk*. The fourteen types of *sukuk* are *sukuk- al- ijara mowsufa bithima*; 2 *Sukuk manfaa ijarah;* 3. *Sukuk manfaa ijara mowsuffa bithima*; 3. *Sukuk* mikiyat al-khadamat; 4. *Sukuk* al-salam; 5. *Sukuk* al- istisna'a; 6. *Sukuk* al-murabaha; 7. *Sukuk* al-musharaka; 8. *Sukuk-al-mudaraba*; 9. *Sukuk* al-*wakala*; 10. *Sukuk al-muzra'a*; 11. *Sukuk al-musaqa*; 12. *Sukuk al-muqarasa*. The flexibility of creating the *sukuk* is very wide and vast, Nos.10 to 13 relate to *sukuk* for the agriculture type. There are now more options to raise capital through the capital market.

[82] *Sukuk* review, based on Zawya.com, the *Sukuk* monitor.

3.4.2.1.1 Issuance of $60 million musharakah bond by Majlis Ugama Islam Singapura due 2006.

The *musharakah* bond was issued based on two tranches. The first tranche was a $25 million *musharakah* bond for the purchase of a building at 11 Beach Road. The second tranche was the raising of $35 million for the mixed development project at Bencoolen Street. The project will be scrutinised in detail and lessons will be inferred for further development of *waqf* assets.

3.2.2.1.1(i) Bencoolen Street project detail

The project belongs to a *waqf* named Shaikh Ali B Omar Aljunied[83]. The *waqf* has a property situated at Bencoolen Street. The objective of the *waqf* is to provide for the maintenance and upkeep of the mosque at Bencoolen Street. The income was generated from the adjacent shop-houses belonging to the *waqf*. The property was erected in 1952. The mosque and the shop-houses are in a dilapidated state. The shop-houses were previously earning $400[84] in rental income a month; this barely paid for the utilities and other statutory requirement fees. The property location is central, adjacent to it is the Bencoolen Hotel rated as a 4-star hotel. The busiest and famous shopping belt area in Singapore, Orchard Road, is within walking distance. The area has also been earmarked for an educational belt; within the area are the Singapore Management University Campus[85] and the Nanyang School of Fine Arts.

Due to the huge commercial potential of the land at Bencoolen Street, Muis have decided to develop the site. The biggest challenge is to raise the huge finance needed for the development. The proposed development is ambitious: 104 apartments with services, a mosque and a 6-storey commercial complex. The total cost of the

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[83] Shaik Omar Bin Ali Aljunied, an Arab merchant, was born in 1792 and passed away in the year 1852. In 1821 he took up residence in Singapore and built the Mosque in 1845. Besides the mosque he also built houses on the endowed land which comprised in leases Nos: 1460, 1462 and 1464. The rental received from the houses was used to maintained the mosque and to pay the salaries of the Imam and bilal. The title deeds of the Mosque appear to be mislaid and there is no trust deed disclosing the trust on which the lands were held. Although the trusts deeds cannot be located, the appointment of trustees by the order of court was made in 1906 “In the Matter of the Indian Trustees Act XXII of 1866” registered in Volume CCLVII No. 105 were vested in certain trustees proved that the trust was created by the wakif. The wakaf was vested in Muis on 30th of June 1971 under statutory declaration registered on 10th July 1971 in Volume 1858 Page. 410 No. 86 Muis internal documents.

[84] Muis Annual Report 1999

[85] Singapore Management University (SMU) is the 3rd University in Singapore catering to the niche area of business & law.

development is approximately around $35 million. This was the first time that the Islamic Religious Council was faced with a development of such scale and the finance needed to develop the project. Previously no external financing has ever been attempted for *awqaf* assets.

To raise the capital for this development an innovative solution through a *musharakah* bond was structured. The details of the structure are as follows and for the diagrammatic structure of the musharakah bond, please see exhibit 3.1:

i) The first part of the contract – the joint venture/*musharakah* contract.

The *waqf*, *Bait-ul-mal* and Warees (a wholly owned subsidiary of Muis to handle *waqf* properties) entered into an agreement to build the mixed development at Bencoolen Street. The *waqf* contributed land and some capital. *Bait-ul-mal* provided the necessary amount needed to develop it, i.e. the $35 million through the investors, and Warees provided a nominal amount and their expertise.

ii) The second part of the contract - the *ijarah* (leasing) contract

In order to provide a return to the investors, a leasing contract was entered into between the Special Purpose Vehicle (herein called the SPV) to enter a lease agreement with Ascott International Pte Ltd[86]. Ascott agreed to lease the property for a period of 10 years. Hence a steady stream of income was secured and this can be matched with the return to the investors. Although the bond was issued for only 5 years, the rental agreement was signed for 10 years, but the apparent mismatch of the period will not pose any problem as there is an option of renewing the bond after 5 years.

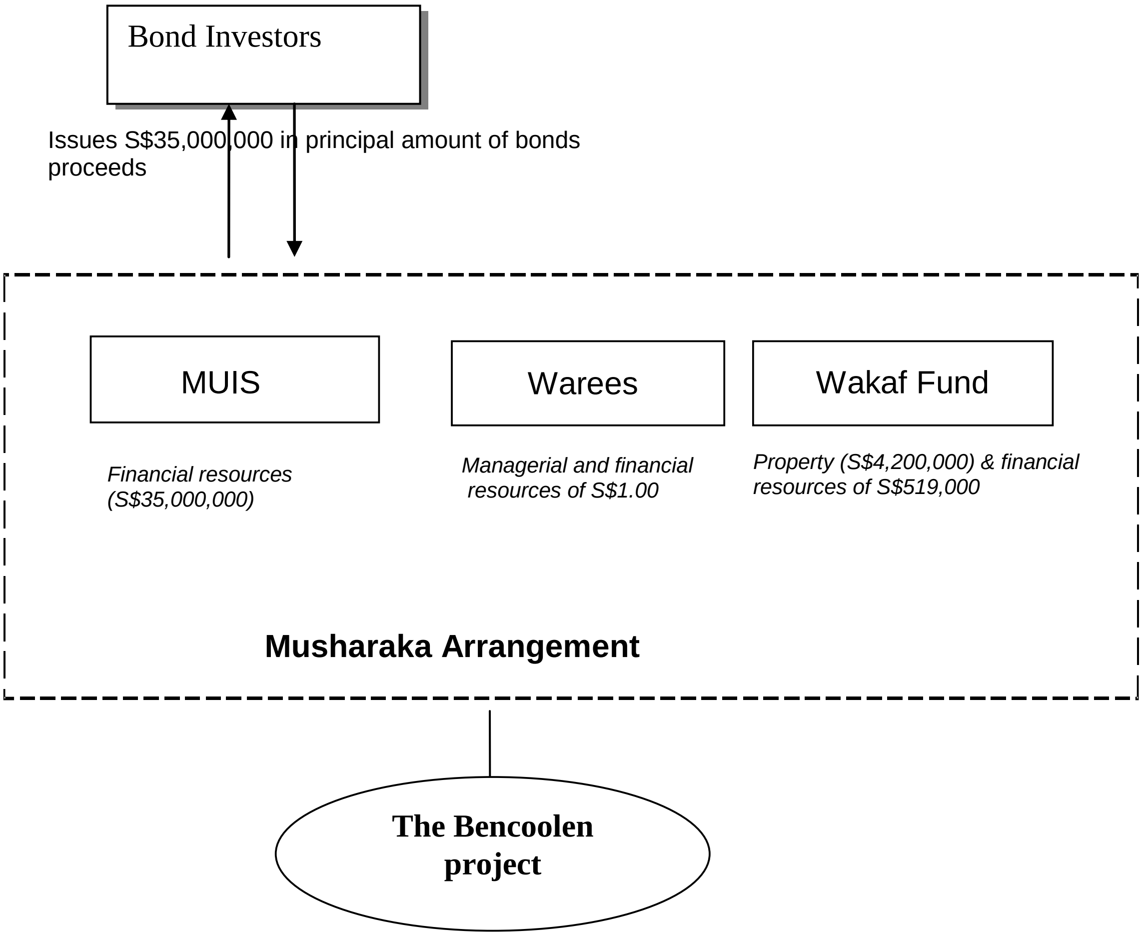
ii) The profit distribution

In the *musharakah* agreement above, the profit shall be divided accordingly within the proportion of the capital invested. The investors through *Bait-ul-mal* will earn a steady stream of income based on the agreed rental income. Ascott Private Limited has agreed to lease the property in the first year for $1.3 million subsequently increased to $1.8 million from year two to year ten. The return fixed for the investors is 3.03% which is about the rental income in the first year. The *waqf* will get a brand new mosque with increase capacity for its jemaah and 4-storey of commercial

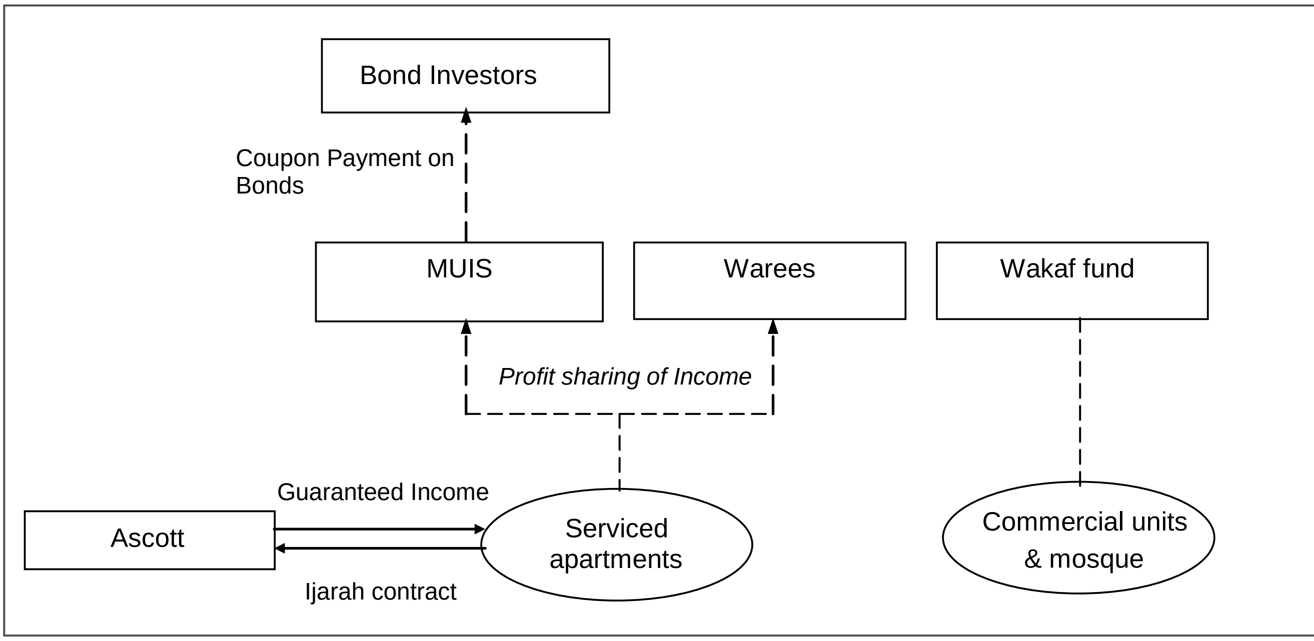
[86] Ascott International Pte Ltd which belongs to Capital Land is a service management company which manages many service apartments in Singapore as well as overseas. The company profile can be accessed through http://www.the-ascott.com.

properties to provide income for the mosques to maintain and run its operation. Since *Bait-ul-mal* bears most of the risk in undertaking the $35 million investment, in return it will receive the service apartment with a 99-year lease. On top of this *Bait-ul-mal* has also contracted with Ascott Pte Ltd a profit-sharing ratio on the business of the service apartments, this does not include the return to be imputed for the investors in the *musharakah* contract as the profit-sharing ratio is exclusively for *Bait-ul-mal*. Warees Investments Pte Ltd will receive a nominal investment return and professional fees for managing the development.

Exhibit 3.1: Muis- Issuance of $35 million Bencoolen Street Musharakah Bond



The distribution of returns from the transaction to the joint-venture partners is as follows:



Source: Muis

3.4.2.1.2 Value Creation

This innovative solution in raising finance through the capital market has created an expansion in the value of the *waqf*. There are many advantages in such a structure: of which the needs of the beneficiaries for whom the *waqf* was created have been met. There is a new mosque with doubled capacity for the jemaah. The mosque now has a steady stream of income from the commercial properties that are apportioned to the *waqf*. The *waqf* which used to earn a paltry $400 of monthly rental income, will now see a gross monthly rental income of $20,000. [87] The *waqf* has no capital; this is made possible by allowing it to enjoy the benefit it will receive for the *waqf* from the long lease of its property. However, the only setback is that the *waqf* needs to sacrifice part of the land it uses to *Bait-ul-mal* for 99 years. In some countries, such as Egypt and Syria, this option of 'selling' *waqf* properties on a long lease which was then popular in the 12th century of the Ottoman empire, has been abrogated in the 20th century to avoid the loss of control and total loss of *waqf* assets as it is difficult to keep track and administer tenancies of long duration[88](G. Baer,

[87] Muis Annual Report 2006, *waqf* Bencoolen.
[88] The instrument *Hikr* (*hukr*) existed in the 12th century in Cairo and Syria. The idea is to ameliorate dilapidated *waqf* so that a *waqf* can be revived by the tenants as the trustees or administrators of *waqf* are cash- strapped and unable to revive the dilapidated *waqf*. Moreover the other instruments such as *idjaratayn* , *khulluww* and other similar contracts were introduced. The alienability of the *waqf* land which was initially not possible has been made possible by such contracts. Though this was the original intention, the lack of proper administration for *waqf* property which was subject to such long contract has created a problem of monitoring and given rise to fraudulent acts of the tenants to sell the

2008). In the context of Singapore, although it is a long lease, to maintain the perpetuity nature of *waqf*, such arrangement is acceptable as the reversionary interest of the title of the property will return to the *waqf* after 99 years. Stringent accounting disclosure and good governance by the Singapore government in keeping records are factors which create confidence in pursuing such contracts. Lastly, for the first time in history, an Islamic capital market was introduced to the financial sector, creating demand for *shari'ah*-compliant fixed-income investments to the investors locally. In all, the development has caused a multiplier effect on the economy and has created a positive effect on all parties concerned.

3.4.2.1.3 Issues raised for raising *musharakah* bond for *waqf* properties

There are similar issues between this case and the development of the *Waqf* Kassim such as selling of *waqf* properties on 99-year leases. Although the fatwa allows the selling of properties in order to replace it with a higher value, the selling of *waqf* property is not something which is easily tolerated. The important matter to note here is that the *waqf* must create a value which is more than before it was developed[89] (Daniel Crecelius, 1991). Further, the beneficiaries will benefit from the increased income. In the Bencoolen example, valuation of the land was done to compute the amount to be allocated to the *waqf*. The basis is that *waqf* should benefit on a higher value but not on other criteria such as land area. For example if the *waqf* has an area of 1,000 sq metres of land, say only 50% of it can be sold so that the *waqf* can develop the other 50% of its land, without established guidelines, the peril is that the *waqf* may have given more than its fair share of the asset.

The other important factor to note is that during the development stage, the income which is due to the beneficiaries will be halted for the duration of the construction and until the rental income flows in. In such cases the contractual period should not be prolonged and in some cases the *waqf* will be indebted for the amount

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property outright or to claim the whole property as private property and abolished the *waqf* element. In view of the humongous problem it posed to the *waqf* properties, in 1952 by Art.7 of Law no.180 the *hikr* on *waqf* ahli was abolished in Egypt and followed later by Law no.295 of 1954 which provided for the voluntary sale and termination of *hikr* on *waqf khayri*(public *waqf*). The same contract was also abolished in Iraq and Turkey. Please refer to the Encyclopaedia of Islam, by G. Baer on an elaborated description of such contracts.

[89] Daniel Crecelius mentioned in his journal on the *Waqf* of Muhammad Bey Abu Al-Dhahab that *waqf* property could only be exchanged for property of similar value and having equal permanence.(D. Crecelius, 1991)

of the construction to which it is committed. An example is the case of *Waqf* Jamae, which developed a row of shop-houses in Dunlop Street and Telok Ayer Street. An advance of SGD$10 million was given by *Bait-ul-mal* with an internal yearly 'administrative charges' for the money advanced at a rate of 3-months fixed deposit rate to the *waqf*. It took the waqf about 16 years to pay back the loan.[90] During this period, if the rental is used to pay back the loan, the beneficiaries will not have any share of the income from the *waqf*.

Hence to overcome a long period of nil income from the *waqf* after deduction of loan, the Muis management has decided to create a policy of distributing the net income by paying eighty-percent on the loan and 20 percent towards the beneficiaries. Thus the beneficiaries will still benefit from the *waqf*. This policy is important as it ensures the sustainability feature of the *waqf* to continue to serve its beneficiaries.

In the case of *waqf* properties, there are other issues to be dealt with. First the ownership of the property of the *waqf* cannot be transferred. Second, there is the question of whether the property can be mortgaged which will of course, mean a transfer of ownership in the case of mortgage? Third, the usufruct which will be given away to the investors will result in the total halt of the income to the beneficiaries and whether this is permissible under the will. Fourth, there are many restrictions beside the *shari'ah* guidelines which may encompass the will. Some founders impose many restrictions on the property in their wills. For example, property should not be sold, should not be transferred and should be administered in a certain manner.

These are some of the issues that have hindered the development of *waqf* properties. However these issues can be overcome if there are no caveats put in the will; for example if the will is silent on the selling of property an *istibdal* instruments can be used in this case.[91] The property in a *sukuk* transaction can be converted to a long lease instead of the freehold title that the *waqf* owns.

On the issue of mortgages, the government has become the guarantor of a recent development of *waqf* assets in the middle of Kuala Lumpur.[92] In view of the

[90] Loan started in 1994, the waqf managed to clear its loan Based on $10,000,000 over an annual net income of the by 2008. See chapter 6 of this thesis.

[91] Even if the will does not allow for any sale of the property, if the administrator deem it is important that an *istibdal* or transfer process is effected, then such cases can be brought up to court to vary the intention of the will.

[92] A wrap is a concept where the basic obligor is not asked to provide more security, instead the end investor takes a lower yield so that a bundler or issuer may guarantee its underwriting or credit policies.

many *waqf* properties now under state administration, sovereign backing and guaranteeing can act as a substitute for a mortgage. A third issue on the usufruct, is flexibility in the way the coupon payment on the bond is structured. If the rental is giving 6% income annually, the *waqf* can retain the usufruct, for example 2% of the return, and distribute the 4% to the investors. In this way, while the beneficiaries may have a smaller return now, they will have a better return in future. In some cases this may guarantee the sustainability of the *waqf* as it freezes its assets to obtain capital for further development of its assets.

The other major problem is that, when a huge development is undertaken, the repayment period of the capital amount is almost always extended. Repayment can sometime takes a substantial period. As a result, the *waqf* will be indebted for a substantial time. There are, however, problems to a long indebtedness that the *waqf* may have to face. One option is for the *waqf* to resell the development on a leasehold basis either in part on in whole. With the cash received from the long lease, the *waqf* can then use it to buy other property. In all, the *waqf* may well gain through such transactions rather than be stuck with a dilapidated property earning little or no rental. Below is the example, of a *waqf* using *sukuk al-intifa'a*. This is similar to the time-sharing concept.

3.4.2.2 *Sukuk al- intifa'a*

The other interesting method of financing *waqf* is using the *Sukuk Al-Intifa'a*, which was used to develop the King Abdul Aziz *Waqf* – the project known as the Zam Zam towers in the holy city of Mecca. The case study is listed below which will be used to analyse the applicability of using this structure for other *waqf* properties.

3.4.2.2.1 Case study Zam Zam towers[93]

The project is located in the Holy Cities of Mecca, the King Abdul Aziz *Waqf* where the development involved a multiplex of high –rise towers. Zam Zam towers

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IDB in its supranatural issuance in year 2003 apply this concept where it guarantee the performance of the underlying assets by agreeing to buy back the asset pool at a specific price upon maturityof the sukuk as quoted in Nathif J. Adam,A.K.T (2006). Islamic Fixed Income Securities : sukuk in S. Jaffer (Ed.) , Islamic Asset Management (pp.72-81): Euromoney. In the case of waqf such concept can also be applied by the administrator or the government guaranteeing the price of the sukuk on the value of the underlying asset . However in the case of waqf the underlying assets cannot be mortgage.

[93] .***Sukuk* Al-Intifa'a** – refer to Abdul Kader Thomas' book pg. 84 Chapter 5(Thomas, 2005). He refers to HOMOUD, Fuad, @workshop on *Sukuk* al-intifa'a: their Basis and charactristics , presented at the international and Islamic leasing conference, Kuwait , 24, 25 April 2005. See also ref in (Ahmed, 2004) Information can also be obtained through the website: http://www.zamzamtower.com/

was a project secured by an affiliate of the Kuwait-based International Lease Investment Company (ILIC, an Islamic Development bank–sponsored entity) called Munshaat.

Munshaat entered into a 24 year reversionary ground lease with the *waqf* and had an obligation to build a high- quality service facility for pilgrims that met specific goals of the *waqf*. The company then engaged in a detailed study of a demand for short term accommodation in Mecca as well as the prices for such accommodation according to the Islamic calendar. Then, the company radicalised the re-conceptualisation of the project by applying the concept of the time-share vacation facilities and fractional ownership within the framework of the governing reversionary ground lease (Ahmed, 2004; Nathif J. Adam, 2006).

Ownership issue

The long-term ownership of the building remains with the *waqif* in Saudi Arabia. There are limitations to the ownership of property – even more so for a *waqf* property in Mecca. Munshaat re-characterised the property into multiple estates: the ground belong to the *waqf;* the buildings belong to Munshaat as a Gulf Cooperation Council (GCC) company, ultimately controlled by the Jeddah-based Islamic Development Bank. The *munfa'a*, or benefit of the space, could be sold for 24 years. Munshaat then entered into a Built, Operate and Transfer (BOT) contract with the *waqf* governed by the reversionary lease and sub-contracted construction of a 31-storey, 1,240–unit building to a prominent Saudi Arabian builder. The US$390 million contract was funded by an extraordinary issuance of Islamic securities. These securities represented a fractional ownership of the right to use a specific part of the building during a specific period. The shares were priced according to season, unit location and view. The shares were made fully exchangeable and represent a 24-year guaranteed right to use for a specific time each year, a pre-specified space.

The securities were sold prior to construction, thereby funding the construction. The *sukuk* or securities represent a forward lease for the property, meaning that Munshaat bears a refund risk if the project is not completed. Among the novel features of this project is that the holder of a *sakk* may elect a number of options from which to benefit; he or she may simply show up at the reserved time, exchange times through a specialised affiliate of Munshaat, contract for Munshaat to sub-lease the contracted time to a willing tenant who wishes to visit *Mecca* at that point of time, or just sell the *sakk* to a willing buyer. Since the *sukuk* represents a specific form of property, the certificates may be sold on an instalment basis. This also makes it easy for a number of people to own the certificates and access and use the property they represent.

This has also created a model which breakdowns the property into different types of facility and, according to Thomas (2005), this is the first modern lease derivative in Islamic finance (2005)

Here the concept of *waqf* property has been separated into two. The land which belongs to the *waqf* will still remain with the *waqf* in terms of ownership. Hence there is no problem of *waqf* ownership. The building is then sub-leased for an ownership of 24 years, the right to use for a specific time, and a pre-specified space and time sharing concept. Because of the high demand and the high cost per unit area of this property, such an arrangement can be made to actually arrange a lease for a very limited number of days. According to El-Gamal this is "a positive partial ownership provision to develop a useful financial vehicle"[94](2006: 40). There is another interesting manner of consolidating *waqf* assets into one property by utilising the *sukuk* structure coupled with *istibdal*. Eventually the end result mirrors the way *waqf* is managed in a REITs-like manner.

3.4.3 *Sukuk al-musharaka* using *istibdal* and an internal I-REITs arrangement for the *waqf* ownership.

The following section illustrates an alternative manner in the management of a *waqf*. This new dimension of transferring many *waqf* properties to a single entity is a unique concept in structuring *waqf* assets.

Before looking at the manner in which the assets were purchased in the next example, there are several traditional ways *waqf* can be acquired. History has shown that *waqf* properties were acquired by using the following method (Daniel Crecelius, 1991);

i) Purchase (*tabayu*)
ii) Exchange (*istibdal*)
iii) Relinquishing of right (*isqat*)

[94] This is a sale of usufruct, and the possible way of sub-leasing which has given way to the time-sharing concept. For El-Gamal discussing the ownership issue for leasing see El–Gamal, 2006 p.40.

In the example quoted by Crecelius on the study of the *waqf* of Muhammad Bey, the property was acquired by relinquishing the rights on the estate and transferring to the *waqf* instead. The following example will show the acquisition of *waqf* assets using *istibdal* and the direct purchase of a new asset using the amount received from raising funds by *musharakah* financing and the pooling of many other *waqf* assets to own a single property.

3.4.3.1 Asset migration exercise-istibdal process

This example entails the asset migration exercise for several *waqf* properties to purchase a single 6-storey commercial property situated at 11 Beach Road.

The *waqf* assets are situated in various locations most of which are in the form of two- or three-storey shop-houses. While some are located in prime areas and are fetching high rental yields, others are situated in a less desirable area in terms of rental returns and promiscuous activity concentrated around the area.

There are also many other problems associated with having many properties dispersed around the island. First, there are higher maintenance and administrative costs. Second, it is difficult to manage many tenancy agreements with tenants demanding different kinds of request and businesses. Third, since most of these shop-houses are of the colonial type, they will usually be designated as a heritage site and many restrictions are imposed on a heritage building. In this case any renovation and alteration work done to the building will need the approval of the Urban Redevelopment Authority (URA)[95] . This restriction has also prevented the built-up area of the property from further expansion. Since rental is based on per square metres, the restriction on the built up area has limit the possible increase in rental income.

Having the above factors to consider, the Islamic Religious Council decided to proceed with an assets migration exercise. What this entails is the pooling of all these properties to buy a single high-value asset in a very prominent location, thereby migrating the assets from a low-yield asset to a higher yield property. Hence the first exercise of mass assets migration was made by purchasing the six-storey commercial property at 11 Beach Road. The selling price of the building was $31.5 million. Muis

[95] The Urban Redevelopment Authority (URA) is Singapore's national land-use planning authority. URA prepares long- term strategic plans, as well as detailed local area plans, for physical development, and then co-ordinates and guides efforts to bring these plans to fruition. URA is a statutory body under the Ministry of National Development. Accessed website on 10 June 2008 at http://www.ura.gov.sg.

then identified the suitable *awqaf* to be placed under this investment exercise. In total 43 *awqaf* were identified some with cash and properties to be placed as shareholdings in the company. Those *awqaf* which have only cash in their portfolio was because their properties were acquired by the government to make way for urban redevelopment. The cash *waqf* (*waqf nuqud*) has very little alternative in its investment, as very limited *shari'ah*-compliant investments are available in Singapore[96].

The cash *waqf* which was previously placed in time deposits are now able to participate in the ownership of this property through an equity participation concept. At the end of each year the income is distributed based on the percentage of ownership contributed.

The *ijara* concept here is to establish a head lease which is the formation of an SPV called Freshmill Pte Ltd[97](El-Gamal, 2006). Freshmill Pte Ltd acts as a head lease which will guarantee the investors the return that is contracted in the Islamic bond instrument. Fusion Pte Ltd which owns the property at 11 Beach Road, is the management company which manages the leasing and the upkeep and maintenance of the property. In this case, to lock the guaranteed amount to the investors, a head lease company was created to provide that security.

The unique structuring of this Islamic bond is that there are two contracts existing in the single structure. The first is the *musharakah* contract of which all parties come together to invest in the purchase of the property. The second leg of the contract is to distribute the income for the capital invested in the purchase of the property; the leasing contract is created to give the steady flow of income. However, the leasing contract is contracted with an SPV. Here the question is whether all the investors who are involved in the contract should legally and morally have similar

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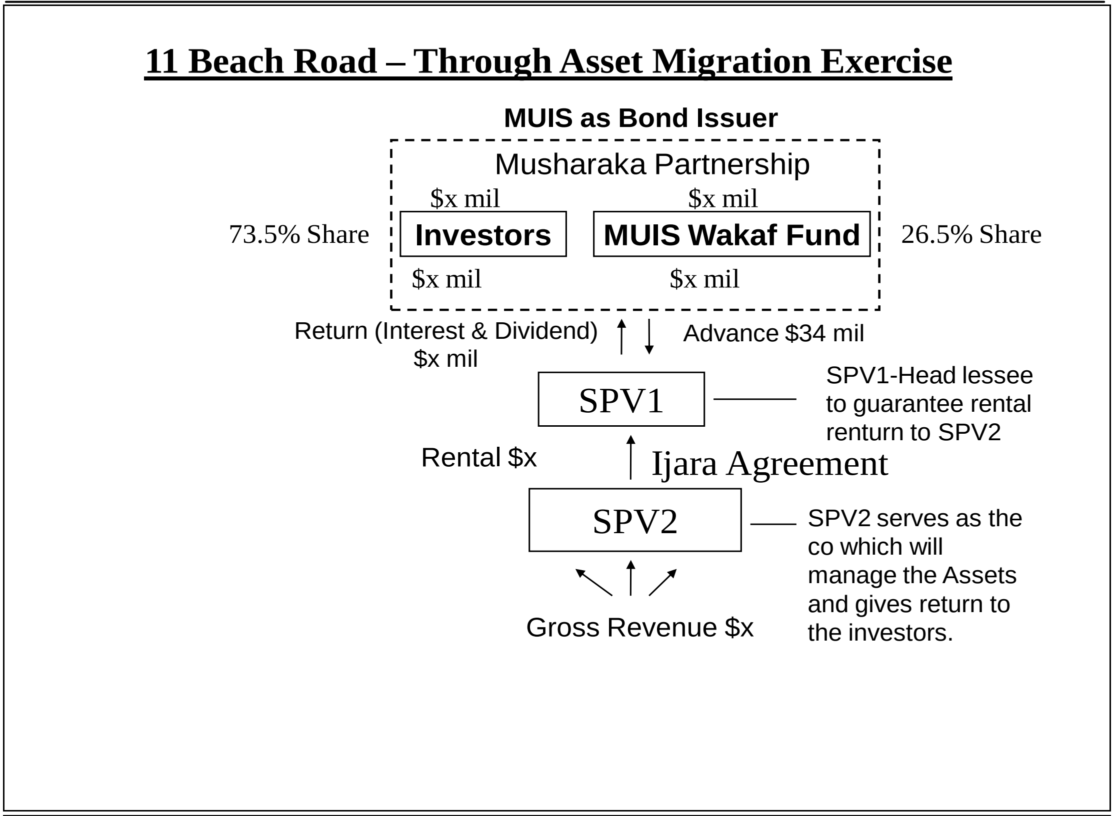
[96] As at 2007, the only known investment vehicles which is *shari'ah* approved are 3 *takaful* fund, DBS Assets Management have 2 *shari'ah* approved unit trusts which are the Amanah Saham Mendaki and Mendaki Global Fund. Other non-*shari'ah* but non-contentious funds are, for example, property funds. There is no Singapore dollar money market nor fixed income instruments which the *awqaf* can invest in. The Overseas Chinese Bank Corporation (OCBC) has started on a *shari'ah*h complaint instrument in its current and savings account and recently a time-deposit account. As a result the *awqaf* are normally placed in a time deposit account which is not *shari'ah* compliant but is deemed *dharurah* in the Singapore context, it is based on the Singapore Islamic Equity Fund.

[97] El- Gamal cited in his book that contemporary jurists reject the idea of head-leasing. He quotes:' In head- leasing , a lessee sub-leases the property to a number of sub- lessees. Then, he invites others to participate in his business by making them share the rentals received by his sub-leases. This arrangement is not in accordance with the principles of *Shari'ah*. The lessee does not own the property . He is entitled to benefit from its usufruct only. That usufruct has passed on to his sub- lessees. Now he does not own anything, neither the corpus of the property nor the usufruct. p.113.

rights to the owner where the owner is responsible for the maintenance and upkeep of the property[98]. The diagrammatic structure of the financing of this project is shown below;

Exhibit 3.2: Muis Musharakah Bond- Purchase of 11 Beach Road



Source: Muis

The fatwa guideline for an *istibdal* process is that the *waqf* must secure the shareholdings in the new property before the existing *waqf* assets are sold. Because of this, *Bait-ul-mal* has to serve the role of filling in the gap and selling the shareholding once the *waqf* has come onboard to purchase its share of the property. In this particular case, there are *awqaf* which are unable to sell their property on time to come onboard and have a share in the ownership of this asset. However, to secure the ownership, in the *waqf* accounts, it will reflect both the equity ownership and the

[98] See extraction made by El-Gamal in his book (El-Gamal, 2006)p.98. on Justice Taqi Usmani where he quotes:' It should be remembered, however, that the certificate must represent ownership of an undivided part of the asset with all its rights and obligations. Misunderstanding this basic concept, some quarters tried to issue *ijara* certificates representing the holder's right to claim a certain amount of the rental only without assigning to him any kind of ownership in the asset. It means that the holder of such a certificate has no relation with the leased assets at all. His only rights are to share the rentals received from the lessee. This type of securitisation is not allowed in Islam.(Usmani, 1998,p.179)".

debt obligations it has to pay *Bait-ul-mal* to secure the shares in the particular property.[99] This timing issue has added risk to the *waqf* ownership valuation. For example, at the point of participation in the purchase of the property, the *waqf* is able to invest $1,000,000. Hence the *waqf* can now be seen as having invested $1,000,000 in the property. However, the *waqf* assets can only be later sold for $900,000. Therefore, the shortfall of $100,000 has to be removed from the initial equity participation. This may cause some financial loss to the *waqf* as the period of holding the $100,000 shortfall entails the payment of the coupon which has to be given to the investors.

The other potential problem in this structure is that, by having a head lease, the particular SPV, Freshmill Pte Ltd, which is owned by *Bait-ul-mal,* will need to undertake all the risk of a head lessor. The head lessee guarantees say a rent of $1,000,000 annually, but the actual rent received is only $900,000. This may be due to bad debt and/or early termination of leases by some tenants. Hence the loss of $100,000 has to be borne by the head lessee which in this case is *Bait-ul-mal*.

In a pure *ijarah* concept, the actual amount of the lease should be given to the investors. However, in a bond structure or even *sukuk*, investors wanted a fixed income stream. Although *sukuk* or Islamic bonds attempt to show the *musharakah* partnership, in this case, using the leasing concept in essence it means the investors demand a fixed income stream. In such cases investors are unwilling to take the risk of any loss in the income stream. In Singapore, since there is no regulatory framework for the reporting of an Islamic bond or *sukuk*, these transactions are reflected as liabilities similar to a bond transaction. [100]

Therefore, for future purchases of *waqf* assets under such structuring, the *waqf* needs to liquidate its assets and purchase them using the cash that it holds, and the *waqf* should not be exposed to a long period of liability by entering into a transaction pending the sale of its assets.

However, this internal arrangement has made the *waqf* flexible in its ownership. Since the balance of the investment is held by *Bait-ul-mal,*[101] the

[99] See the *waqf* accounts which have invested in Fusion Pte Ltd, in 2004 annual report.
[100] Refer to Muis Annual Report 2008, Wakaf Funds.
[101] There are 43 shareholders in this structure. 42 shareholders belong to *waqf*. *Bait-ul-mal* also represents one of the shareholders. *Bait-ul-mal* shareholding is necessary to cushion for any shortfall in investment from the waqf. Therefore *Bait-ul-mal* serves as the proxy for the shareholding, in this case if the waqf wants to liquidate the share, *Bait-ul-mal* will absorb it from the *waqf*. If the *waqf* wants to increase its shareholdings *Bait-ul-mal* will release its shareholdings portion.

ownership percentage can vary by increasing or decreasing the share in such ownership. However, it is important to note that the valuation of the share price is determined at the point where ownership percentage is to change. For example, when the *waqf* A initial investment is 10% and it wants to increase it to 12%, the 2% increase will need to be computed based on the current market value of the property. This is similar to the way investors in REITs were able to purchase their REITs investment by having a purchase price at a particular point in time[102]. Also in accordance with Article [3/1/6/2] of AAOIFI *Shari'ah* Standard [12] on *Sharikah* (Musharakah), assets are purchased based on the net value of assets, their market value, fair value or a price to be agreed at the time of their actual purchase. [103]

In such an arrangement the shareholders are all *waqf* and *Bait-ul-mal* investors. This makes for easy management as everything is under the same management that of the Islamic Religious Council of Singapore. For a structure such as REITs, this will entail more complication and will be discussed in further detail in the section of this chapter on REITs.

3.4.4 Other types of financing

Waqf properties can be expanded by using the tools of istibdal coupled with the 99- year lease. This is monetizing the assets.

Another example which uses a long lease to sell it *waqf* and use a cash transaction to buy other properties is the *waqf* of Yahya Al-Lukmanji Saif Charity Trust Fund[104]. This *waqf* had five bungalows in Chancery Lane, a high-end residential area. Each bungalow paid a mere $2,400 in rental a month. A developmental plan was done so the area could be developed into 33 units of terrace houses. The town house concept was done in the area with shared facilities such as a gym, a playground and a swimming pool provided in the vicinity. The whole development cost $12 million dollars to develop (without land cost). It manages to sell all the units with 2 units retained by the *waqf* to earn rental income. The profit

[102] See (Garrigan & Parsons, 1997) p.316 in determining the total value of the REITs.
[103] Based on Article [3/1/6/2] AAOIFI *Shari'ah* Standard [12] on *Sharikah (Musharaka*).
[104] By an Indenture of Settlement dated 10th day of October, 1950, the *wakif* created the *wakaf* (trust) by appointing himself, his son Mannan Yahyabhai Saif, Banybhai Yahyabhai Saif and Gulam Hussain Esufali Bandockwala as trustees of the wakaf known as "Yahyabhai Abdulhussain Lukmanji Saif Charity Trust". The wakif vested S$321,000.00 as an initial capital for the purchase of the above properties presently known as No. 33, E,F,G,H,J and K Chancery Lane. The *waqf* was only vested in Muis on 10th June 1997.

accrued to the *waqf* was then used to identify new *waqf* properties which should be bought on a freehold basis to replace the capital amount which had been sold. The effect of the development and transactions is explained in the Table 3.1

Table 3.1- Effect of the increase in the value of *waqf* assets through development and the sale of properties on a long-lease concept (99 years)

***Waqf* Assets**	**Before Development**	**After Development**
Rental Income	$10,500	$35,000
Assets Value	$8 million	$50,000,000[105]
Properties	5 bungalows	33 units of new cluster housing
Cash (received from profit from sale of the units)	-	$10,000,000
Reversionary interest	no	Ownership of all the remaining cluster housing after 99 years.
Net gain - Rental		**24,500 per month**
- Assets		**$ 3 million**

The *waqf* assets value and usufruct increase in the above example, show there is no pressing needs here for the *waqf* to develop: unlike in the earlier example of *Waqf* Kassim and Bencoolen Street project where there was a need to redevelop the mosque. The intention of this *waqf* is to increase the income base so that it can cater to the increasing needs of the beneficiaries[106].

Having progressive fatwa and being able to use *waqf* as a tool for the development of the community, is important in progressing *waqf* assets. Without the bigger picture, *waqf* could become a victim of the legal interpretations designed to circumvent the development of *waqf*.

These are only some of the methods of financing done for *waqf*. The case study done by UTM researchers on the mode of financing *waqf* is shown in Table 3.2.

[105] Based on an estimated $1.4 million per property multiplied by 33 properties.
[106] The objective of the *waqf* is to be given to persons belonging to the Dawoodi Bohra section and particularly Bohras at the town of Dohad District Panchmahal. Income to be used at the sole discretion of the trustees for the following:-

a) giving of monetary or other help in the form of charity to orphans, widows, needy and disabled and destitute persons;
b) to provide for the education of poor boys and girls and the institution of scholarship;
c) medical aid to deserving persons**;**

Table 3.2 will juxtapose the various financing methods used for the development of *awqaf* properties and three states in Malaysia. Discussion on other types of financing will also be highlighted.

Table 3.2 : Financing method used for *waqf* Properties – Comparison of methods used in three states namely Majlis Ugama Islam Melaka (MAIM), Majlis Ugama Islam Negeri Sembilan (MAINS) and Majlis Agama Islam Johor (MAIJ) with Majlis Ugama Islam Singapura (MUIS)[107]

Financing Mode	MAIM	MAINS	MAIJ	MUIS
Musharakah	√			√
Mudharabah	√			√
Ijarah	√			√
Bai-Bithamin al-Ajil				
Murabahah				
Saham Wakaf	√	√	√	
Bait-ul-mal	√	√		√
Istibdal	√	√		√
Sukuk				√
Internal financing from *waqf* funds		√		√
Conventional Loans				√

Source: Combination of research from UTM Malaysia and with author's addition.

Table 3.2 shows which kind of finance was used in the 4 different *waqf* authorities listed aboved. Two more types of financing will be discussed that is the financing through *Saham Wakaf* (*waqf* shares) and *Bait-ul-mal.*

3.4.5 *Saham waqf – waqf* shares

Waqf shares were invented by Majlis Agama Islam Johor. The tool of raising *waqf* via cash is being done by issuing shares to the public. The public will contribute cash for its act of *waqf* and a share certificate is given to the contributor. Table 3.2 shows that all three states have used this form of raising cash *waqf* funds (Gadot, 12-

[107] The method of financing for MAIM, MAINS and MAIJ are sourced from a research study by UTM. This can be accessed through: http://eprints.utm.my/2828/1/75108.pdf. For Muis it is based on a case study approach by this researcher.

14 Sep 2006). The funds are then used to purchase properties. The *waqf* shares are also called *waqf irsyod*. This investment is provided under the Selangor Enactment Act ("Enakmen Wakaf (Negeri Selangor)," 1999).

3.4.6 Bait-ul-mal

Interest-free financing is provided under the *Bait-ul-mal* fund for *waqf* finances and project development. This financing applies the concept of *qard hassan* (benevolent loan) for the three Malaysian states above. In Singapore, the *Bait-ul-mal* or the general endowment fund is used to finance many *awqaf* development projects and financing needs. However a return similar to the fixed deposit rates is imposed on the *waqf*. The loans from *Bait-ul-mal* are unsecured and carry a weighted-average effective interest rate of 3.75% for the year ending December 2008. According to the record, there is also a loan of 1.4% imposed by the Khadijah mosque on the *waqf* . The reason for this is that the mosque is the beneficiary of the *waqf*. However the mosque is better endowed than the *waqf*, and is giving loans to the *waqf* to refurbish its property. In so doing the beneficiary is ensuring that the *waqf* perpetuity status will be prolonged. This practice of giving interest-bearing loans was long practiced during the Ottoman period circa the 18th century where the cash *waqf* in Bursa, according to Cizakca, obtained its income by giving interest-bearing loans to the people(Cizakca, 1995). Although interest is prohibited in Islam, there are *awqaf* which entered into an interest bearing loan. Therefore, can an Islamic institution such as *Bait-ul-mal* and the mosque issue an interest bearing loans? A discussion on this will be presented in the analysis chapter.

The above are examples of some of the financing modes based on a case-study approach in some *waqf* authorities in raising funds for *waqf* development. The next section will examine the concept of REITs in the literature to discuss the applicability of REITs in the management of *waqf* assets.

3.5 Real Estate Investment Trust (REITs)

Real Estate Investment Trust or REITs started in 1960 in America (Garrigan & Parsons, 1997). Initially it was created to provide a vehicle for the public to own equity shares in commercial real estate. Only after 30 years, circa the 1990s has REITs taken off as a popular investment product and become one of the investment choices placed in an investor's portfolio(Garrigan & Parsons, 1997). In 2006, the global REITs value showed a growth of 13.8% or $509.8 billion with a compound annual growth rate of 25.5% for the five year period spanning 2002-2006 (Datamonitor, 2007)[108]. Datamonitor estimated that the future growth of the REITs industry is poised to hit $995 billion by the end of 2011 (Datamonitor, 2007). Muslim investors seeking *shari'ah*' compliant products usually have a strong preference to have real estate in their portfolio, as this is a product which can easily comply with *shari'ah*' requirements (Redmoney, Nov 2007; Sohail, 2006) However the property asset class is usually based on a closed-end fund (Sohail, 2006). Hence with the increases in this particular type of portfolio, the emergence of an Islamic REITs has long been awaited. Nevertheless, Islamic REITs (I-REITs) only took off in 2006. Al-'Aqar KPJ REITSS[109] is claimed to be the world's first Islamic REITSs. It was established as a Malaysian unit trust on 28 June 2006 (Dusuki, 2007; Osmadi, 2007). In addition, the Securities Commission of Malaysia issued its first guideline on Islamic REITs in Nov 2005("First Islamic Reit Advances Malaysia's Masterplan,"", 2006; Securities, 21 Nov 2005).

Islamic Property Funds

According to Eurekahedge[110] report, real estate accounts for 60% (10% a subset of the leasing funds) of the asset class leaving 40% in private equities[111] Islamic assets under management accounts for a total of US$9 billion dollars[112] with real estate accounts for 30% (excluding the leasing fund) this translate to about US$2.7 billion. Islamic property fund average 8 new funds launches per year. Middle East are the largest originator of these funds accounting to about 39% of the total fund (Bernado, 2007).

3.5.1 Islamic REITs – (I-REITs)

As mentioned above I- REITs only started in 2006. The next I- REITs issued was the Al-Hadharah Boustead REITs, the first Islamic based plantation issued on the 1st February 2007. Other I-REITs issue in the pipeline includes a trans-border

[108] The market capitalisation value here reflects the most developed markets for REITS which are the US, Canada, Australia and Japan. Source: Datamonitor.
[109] Al-Aqar KPJ Healthcare REITs
[110] Eurekahedge is the world's largest independent data provider and research house. Visit www.eurekahedge.com
[111] The figures account for 112 products in their database of Islamic fund with a 20% sample of the whole world where there are a total of 550 Islamic funds in the world.
[112] Source Eurekahedge, see footnote 3.

issuance by Singapore's Islamic Bank of Asia involving properties in China (Redmoney, 2007). In all the I- REITs is a relatively new Islamic Investment vehicle.

The following paragraph will look at the different structure in creating a REITs and the *shari'ah*' guideline and combine these with the additional requirements of *waqf* as an asset class to be included in the I-REITs structure. In this section, it will briefly address REITs as a potential vehicle to structure the *waqf* assets. As *waqf* has its own *shari'ah*' and legal guidelines, it will try to elevate this issues and put forth the obstacles and the potential of structuring *waqf* assets through this vehicle.

Different countries have different tax and legal structures governing REITs. For the purpose of this research, the Singapore REITs guidelines will be used to juxtapose the advantages and disadvantages of REITs versus other asset classes and show how this investment vehicle can be structured for *waqf* assets.

3.5.2 Types of REITs structure

There are various types of REITs that can be structured, either public REITs or private REITs. For a public REITs, the capital is raised from the public through an Initial Public Offering (IPO) process which is listed on the Stock Exchange. It is similar to a mutual fund process. However, it has its own sets of rules to comply with in respect of its investment and operating procedures. In the case of Singapore, the guidelines are issued by the Monetary Authority of Singapore (MAS)[113] .

Singapore has become Asia's second largest property trust with 20 listed REITs worth US 19 billion ("Singapore: Consolidation for Real Estate Investment Trusts," 2008)[114]. Singapore's advent into property trusts is relatively new with its first launch of REITs only in 2002 ("Singapore: Consolidation for Real Estate Investment Trusts," 2008). While REITs are a hybrid investment product of bonds and stocks, the risk and return performance depends on a number of factors, primarily the quality of the assets and the management's expertise (Garrigan & Parsons, 1997; Sing & Ling, 2003). While these are the important factors for successful REITs, there will be other factors to consider for *awqaf* properties. *Awqaf* properties were

[113] Guidelines on the Property Trust Fund can be accessed through the Singapore statutes online via the website at http://agcvldb4.agc.gov.sg/agc.gov.sg.
[114] Source Bloomberg data as at end May 2007.

valued at only $332million in 2008[115] in pale comparison of the REITs industry worth of US$19 billion. However, if a Singapore *waqf* is insufficient to create a substantial asset base, there are alternative structuring of property which may include global *waqf* assets, mixture of *waqf* assets and other non-*waqf* assets in a REITs portfolio. While this are some of the alternative structuring and mixing of assets, the following factors are to be considered in structuring *waqf* assets in the form of REITs;

i) The underlying assets
ii) The capital structure
iii) The ownership issue
iv) The tax and dividend payout

3.5.3 Conditions for structuring *waqf* assets

i) The underlying assets

Waqf assets can exist in many forms as listed in Chapter two. The properties which are suitable for the successful implementation of a REITs will be properties of a commercial value. Hence all properties which have religious and non-commercial value will be excluded from the structuring of REITs. However a mixed development of such assets can be considered. Nevertheless, for valuation purposes this will need to be excluded from a REITs valuation. In addition, religious institutions for example, *madrasah*, can only be included if the religious institution is willing to pay the market rental for the premises it occupies.

According to Sing et.al.(2003), the return on a REITs depends on the types of industry the properties are clustered. Average REITs yields for the different classes of properties are listed in Table 3.3.

[115] Muis Annual Report FY 2008 – Waqf Fund.

Table 3.3: Average Yield on different types of REITs and asset classes

S/N	Types of REITs	Average Yield (%)(annualised)
1	Retail	3.5%
2	Commercial	3.7%
3	Industrial	5.0%
4	Hospitality	3.3%
5	Average stock and shares net yield	9.6%[116]
6	10-year govt bond	3.1%
7	Average *waqf* net yield[117]	2.43%

Source: Bloomberg as at end May 2007 for nos. 1-4 and 6 only.

For example, business and office premises gave the best rental yield on a risk adjusted portfolio (Sing & Ling, 2003). Most of the *waqf* properties in Singapore are designated for commercial or residential properties. 83% of the *waqf* properties in Singapore are business entities, about 8% are residential and the rest are non-commercial properties. Table 3.4 illustrated this.

Table 3.4 : Types of Singapore *waqf* properties, valuation and yield

Types of properties	Number	%	Valuation SGD$	Gross average yield
Mosques	13		-	
Madrasah	3		-	
Institutional/shrine	2		-	
Commercial/retail/ shophouses/residential	155		316,157,500	3.27%[118]
Residential	14			
Total	187			

Source: Majlis Ugama Islam Singapura – *waqf* assets listing as at 31 Dec 2008

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[116] The figure is based on the 5-year annualised figure. If a 3-year annualised figure is used it gives a negative return of 6.3% which in the last 12 months went up to 83.8%. The data is as at 31 Mar 2010 derived from FTSE ST all share index retrieved from http: www.ftse.com/indices accessed on 2 June 2010.

[117] Average *waqf* net yields are based on income for investible assets as at Dec 2008 less related expenditure, over the value of the investible assets. Income for investment properties as at 31 Dec 2008 was $10,323,692 and less expenditure of $2,614,612 over an asset valuation of $316,157,500 will give a yield of 2.43%

[118] Gross average yield for the year 2008 are computed based on properties investment income of $10,323,692 over the property valuation of $316,157,500. The net average yield is 2.43% for the year 2008.

Table 3.4 shows that assets which have commercial valuation can be classified as assets with REITs potential.

- *Requirement of activities of the rental*

According to the Islamic REITs guidelines issued by the Malaysia Securities Commission on 21 Nov 2005, the benchmark set is a rental income of 20% for non-permissible activities[119] and for real estate with existing tenants (Securities, 21 Nov 2005). However, for new acquisitions, the guidelines stipulate to avoid total non-permissible activities. While the guidelines do not include hotels, there are increasingly hotels and service apartments which are deemed suitable for *waqf*. For example there is the development of the *waqf* property in Singapore, known as the Somerset which is a service apartment with 103 rooms run by Ascott Pte Ltd. The service apartment has no bar counter and the restaurant only serves *halal* food. In Malaysia, the Jabatan Zakat Wakaf and Haji[120] have announced that together with the Majlis Agama Islam dan Adat Melayu Terengganu (Maidam) and Yayasan Wakaf Kebangsaan (YWK) they are developing a *waqf* land into a hotel development in Trengganu at a cost of $20 million. The hotel will be tagged with a 3- star rating with Islamic characteristic and with all the amenities and facilities and functions of a standard hotel.[121]

Since *waqf* assets are sequestered for a pious cause, the benchmark for non-permissible activities will be more stringent than I- REITs. Therefore there will be no non- permissible rental for its properties.

ii) Capital structure

The second issue to look at is the capital structure. In a REITs formation, to attain high performance on the property, the management must have the skill to acquire assets with value for many and dispose of assets which no longer make the necessary

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[119] Rental activities that are classified as Non- permissible, according to the Malaysia Securities Commission guidelines for Islamic Real Estate Investment Trusts dated 21 Nov 2005 are; Financial services based on riba (interest), Gambling/ gaming; manufacture or sale of non-*halal* products or related products; conventional insurance; Entertainment activities that are non- permissible according to the *shari'ah*; manufacture or sale of tobacco –based products or related products; stock broking or share trading in *shari'ah* non- compliant securities; and Hotels and resorts.

[120] The Jabatan Zakat,Wakaf dan Haji is a government body under the Prime Minister's Office in Malaysia. Their function is to provide governance, guidelines and initiative to drive the three important religious cum economic Islamic Sectors in Malaysia.

[121]Reported in Utusan Malaysia dated 10 Feb 2008. The Jabatan Zakat, Wakaf and Haji (JWZH) has also announced that under the Malaysia Plan -9 , there will be three other *waqf* hotels to be built by the Islamic Religious Council of Malacca, Negeri Sembilan and Perak under the same concept and hotel chain. The first hotel will be ready in about 3 years time in Feb 2011. This announcement can also be found in the JWZH website at www.jakim.my assessed on 1 Mar 2008.

return. Decision making in the acquisition and disposal of assets will need to be made on a constant basis reviewing assets portfolios and making the most out of them. In this respect, for the REITs to grow, it is necessary to maintain a certain amount of gearing for the assets. For Singapore, the guideline allows for up to 50% securities lending[122] (MAS, 2007). In the case of *waqf* properties most *awqaf* are endowed with land or endowed with buildings on them. Some may be dilapidated and others may already have been developed. Usually, to create value for the shareholders, the managers of the REITs will buy a potential asset to turn it into a high-yielding properties by refurbishing them, creative marketing for the tenant mix and pushing marketing , leasing , development and maintenance expertise to create high-value tenancy in its premises. Many of the *awqaf* properties we see today have not reached their potential.

There are two options in a capital structure. For *waqf* properties to be developed or refurbished what is needed is financing. Therefore financing through REITs can be achieved via raising of capital through equity financing, through public offering, or in the case of private REITs, through direct participation as investors via a *musharakah* arrangement or a passive *mudarabah* arrangement where investors provide the capital. The other option is plain vanilla financing through a loan. In *shari'ah* compliant financing, this can be substituted as *sukuk* or other *shari'ah* financing. In essence this will still fall within equity financing and not under debt-financing. Hence the 30% rules in respect of a holding for REITs should not apply for *waqf* properties as they are deemed to utilise *shari'ah*-based financing which is free from debt financing.[123]

In a private REITs the structure is less complicated as there are fewer requirements to comply with and investors can chose the investment style and negotiate to suit the *waqf* requirement.

iii) Ownership issues

In REITs, what happens is that individuals can own a piece of property with very low capital outlay and are able to liquidate it easily. So investors now have the

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[122] MAS REITs guideline. First edition 23rd May 2002 (last updated 28 Sep 2007) accessed through www.mas.gov.sg.

[123] Refer to El- Gamal analysis that some REITs in US have reached a debt to market capitalisation ratio for its various REITs to be above the 33% Dow Jones *Islamic Index* screening benchmark for it to be deemed *shari'ah* compliant. Some of these Islamic REITs have been marketed to the Middle East Investors. (El-Gamal, 2006) Pg. 132.

option of owning properties without the deterrent of property acquisition, others are example, high transaction costs involved such as stamp duty, legal fees and the problem of maintenance, management and the illiquid nature of owning properties.

For *waqf* properties, absolute ownership lies with Allah *s.w.t* but for legal purposes the ownership in this case lies with the Authority in charge of the *waqf.* In the case of Singapore, the ownership lies with the Islamic Religious Council of Singapore, in which all the *waqf* is vested. Hence, if a REITs is being offered, it has to be offered on a leasehold basis so that ownership will not be an issue. For privately owned REITs, the shareholding of a particular *waqf* can be segregated to show the amount of capital each *waqf* contributes. For example, the case of 11, Beach Road will be used to show the breakdown in ownership of each holding. There is a total of 43 *awqaf* identified for this assets migration exercise. The properties were identified and eventually liquidated to migrate to a single property known as 11 Beach Road. The 43 *awqaf* funds were pooled, some with properties, others invested in cash.

Out of the 43 *awqaf* above, 15 *awqaf* contributed cash towards the investment and 28 *awqaf* liquidated their properties to invest in the enterprise. All the 28 *awqaf* which liquidated their properties sold their titles on 99-years to 199-year leases. As mentioned in Chapter 2, most of the *waqf* properties will not be sold on a freehold basis. The deliberate decision to sell *waqf* on a leasehold basis, although the concept of *istibdal* was applied, was to allow for the capital expansion of the *waqf* concerned.

The total investment of $26 million should give each *waqf* a rental yield of about 3-4% per annum. This return is compatible with the 10-year government bond yield of 3.1%.

What happened to the structure above is that both the cash *waqf* and *waqf* with properties came together to purchase a single property by buying a company called Fusion Investments Pte Ltd.[124] Income will be distributed based on the shareholdings each *waqf* owns. Since the property is managed as a company account, all expenses towards managing the properties will be deducted as expenses. The company also maintains some investment holdings from *Bait-ul-mal*. What happened in this structure, it allows new *waqf* to enter into the shareholding and reduce their shareholding in *Bait-ul-mal*. *Awqaf* which wants to exit from this shareholding will

[124] The purchase of the properties through buying the company which own the properties has its own advantages as it will attract less stamp duty charged at 0.02% instead of the normal 3% charged on the purchase of properties. The company will then be taxed less by showing interest income rather than rental income which will be subject to higher company tax rate.

have to sell its share to another *waqf* or, in this case, *Bait-ul-mal* will take the share. Since the way it is managed is via internal funding in the Islamic Religious Council fund allocation, the parties or investors involved will only circulate among the funds managed by Muis.

The example above is to give an idea of how flexible and liquid *waqf* capital can be managed. The example also shows how the shareholdings will be distributed and that there is no problem of ownership. The entire company can have more than one owner, each having a share in the whole property. Other non-*waqf* entities can also participate in the shareholdings.

However, for a cross-border REITs structure or a public REITs structure, managers need to consider the *waqf* restrictions in different countries for example *waqf* properties in Morocco, Saudi Arabia or the Gulf States. To structure a cross-border *waqf* REITs will be more challenging as there are different legal and *shari'ah* issues to comply with. However, referring to the case of the Zam Zam towers earlier, using the *sukuk intifaa'* shows a case in kind already exists for *waqf* properties to have a breakdown in the lease title. In this case the lease is given for 30 years. The concept is the time-sharing concept. Ownership still lies with the *waqf*, but the REITs can be structured to allow for different ownership styles for example, leasehold ownership.

The ease of the *waqf* properties to be liquidated can be an issue but here are guidelines highlighted in the second chapter on how *waqf* properties can be liquidated. Although there are no stringent rules on the sale of properties, some *awqaf* assets are stipulated in the will that they cannot be transferred or sold. Hence, these are issues for a REITs manager. He needs to consider the risk of holding the assets even though it no longer makes a business case to retain them. The way out is to sell them back to the *waqf* owner.

The other issue pertains to the cashing out by the investors on the principal amount. If there are many investors who need to cash out, then there is a possibility for liquidating the assets.

iv) Tax and Dividend payout.

Awqaf in Singapore already enjoys tax exemption status. One of the main advantages of structuring a REITs is to gain the income tax advantage. Therefore, in structuring a REITs, it is essential to obtain the tax benefits. This will be useful for the investors as it will give a higher return as compared to company stock. For the *waqf* there will not be any tax advantage, but if we are looking at cross-border REITs, in places like Turkey and other countries where *awqaf* are being taxed, this option will be useful. However, a country's REITs regulations may not be in existence yet, so more checks are needed to ensure that the *waqf* and the investors are not worst off.

- **REITS Tax**

In Singapore, REITs income is not taxed if it is distributed. Undistributed income is subject to 15% corporate tax rate(Young, 2007). For foreign distribution it is taxed at 18% which is further reduced to 10% if it is made during the period 18 Feb 2005 to 17 Feb 2010(Young, 2007).

- **Dividend payout and Income received**

There has been a study made to compare the different yield obtained from the different assets class investments. According to the study, REITs, which is a hybrid of stock and bonds, will have different yields in different asset classes. For a Singapore REITs the average dividend yield was 3.71% in 2007 (Young, 2007). The average bond yield is 3.1% for a 10 year bond and for stock and shares the average yield to date in 2009 is -7%. For a *waqf* currently obtaining less than this yield, the option to go into a REITs structure will offer an advantage. See Table 3.3 of page 69 to show yield comparison on different assets classes.

3.6 Conclusion

The chapter has discussed some financing modes used in the development of *waqf* assets both in a contemporary and an historical perspective and presented the possibility of placing a *waqf* in REITs structure. Some of the contemporary mode of financing used for *waqf* assets discussed in this chapter have included the used of *sukuk*, the used of *musharakah* financing with the tenants, and the creative sukuk intifa'a used for the Zam-Zam towers. There are also other examples where cash is pooled together via deductions from each Muslim employee's salary to contribute to a mosque building fund. This pooling of funds has enabled the community to enjoy a new mosque in a satellite town being built in Singapore. As presented in table 3.2 shows, there are only 13 mosques which were created via the *waqf* instrument and 28 mosques in Singapore were built using each mosque's own building fund. Although the assets are not reflected in the *waqf* fund, the creation of a mosque itself is a *waqf* in a theological sense.

The list presented in this chapter is not exhaustive but it serves as an example of the various ways *awqaf* can undertake to finance their own *waqf* properties. For example, the Qatar Islamic Bank entered a contract using *istisna*/specific *ijarah* worth 145 million Qatari *dinar* with the Qatar *Awqaf* Authority to fund a residence-cum-office project[125]. Some of these methods may well be accepted by certain *shari'ah* scholars and certain countries while others are still not comfortable with the manner *waqf* assets are handled. With more Islamic financial instruments advancing in the Islamic financial sector, *awqaf* have now bigger and better opportunities to take advantage of such vehicles to leverage their assets further and obtain greater returns. Besides looking at the financial methods to enhance the assets of a *waqf*, other important factors, such as the administration, the organisation and the legal system inherent in a particular country, contribute to the overall enhancement of the *waqf* assets being managed. In the next chapter, how awqaf are administered in the Singapore context will be scrutinised. This chapter will also explain how the institution at the heart of this study administers its *awqaf*. Although some of the examples which have been presented in the second and the third chapters have been focused on their own areas, Chapter four will adopt a broad general view of the institution of *awqaf* to see how all its various aspects fit together.

[125] The project consists of 5 buildings comprising 176 flats. Its earnings will be used for charitable purposes in the name of late Ahmed Abdullah al Misnad. Accessed from http://www.awqaf.org/waqfic/NewsDetails.asp?Id=23&lang=en

Chapter 4: Singapore *Waqf* Administration, Management and Development – Case Study Muis

4.1 Introduction

This chapter will discuss the environment where *waqf* in Singapore operates. Some case studies of the management and administration of *waqf* will be quoted. However, there will be further examples and analysis done on *waqf* management in the findings and analysis chapter. This chapter hopes to give an overview of the current practice of *waqf* management in Singapore. This background is necessary in building up a case-study approach in analysing the various factors in *waqf* management presented in the subsequent chapters.

The *waqf* complements many other forms of charitable acts for the Muslims community in Singapore. Singapore Muslims are fortunate to be able to practise their religious activities under the provision of an Act. The act which governs the religious affairs of Muslims in Singapore is called the Administration of Muslims Law Act[126] (AMLA).

This Act, provided for the creation of the Islamic Religious Council (Muis Ugama Islam Singapura or Muis) which oversees all the religious affairs of the Muslim community, such as the administration of z*akat* in respect of its collection and disbursement, *halal* certification, management and administration of *awqaf*, *hajj*, mosques and *madrasah*[127] .

Singapore is a secular state with 14% Muslims of whom the majority are Malays. The largest faith category is the Buddhist as the Chinese form the majority of the population.[128]

[126] Administration of Muslim Law Act (AMLA) chapyer 3 of the Singapore statute. The act can be accessed through www.agc.gov.sg.

[127] *Madrasah* is a religious school. However *madrasah* in Singapore provides both a main stream education curriculum such as maths, science and the human sciences and equips to take national and international examinations such as G.C.E. 'O' and 'A' levels besides giving them a religious education as well. Muis has the power to control and register all Muslim religious schools in Singapore(*madrasah)* under Sec. 87 of the AMLA

[128] According to government statistics, the population of Singapore as of September 2007 was 4.58 million, of whom 3.7 million were Singapore citizens and permanent residents (termed 'Singapore Residents') Chinese formed 75.2% of 'Singapore Residents', Malays 13.6%, Indians 8.8%, while Eurasians and other groups formed 2.4%. Assessed on 9 Sep 2008 at www.singstat.gov.sg

Awqaf form the largest assets value of the total assets managed by the Islamic Religious Council of Singapore. There are 99 *awqaf* registered in Singapore with over 187 properties and total assets worth SGD473 million[129]. Sections 58-64 & 73 of the AMLA regulate the administration of *awqaf* in Singapore.

Awqaf thus serves as a very important financial resource tool to finance the community's social and religious needs. Although *awqaf* creates an annual income of $13 million[130] they still fall short of the amount needed to have the desired impact on the beneficiaries or community. For example, *Waqf* Jabbar was created for the maintenance and upkeep of the Mydin mosque. When it was created, the yearly amount from the rentals of the residential properties was adequate to maintain the *kampong* (village) mosque. However, even after major redevelopment and a manifold increase in income, there is still a shortfall in the amount needed by the mosque. From its accounts, the mosque needs $330,081 for its maintenance and administration alone[131]. Yet, the *waqf* can only provide a net annual income of $17,797[132] which contributes only less than 5.4% of the amount needed by the mosque. Hence the *waqf* can no longer keep up with the needs of the beneficiaries. Another example is *Waqf* Aljunied which was created for *Madrasah* Aljunied. The income from the *waqf* is also unable to support the *madrasah* fully, hence the mosques and *madrasah* have to find their own funds to keep themselves viable.

Although the research is focused on creating and enhancing the financing and development structures which were discussed in Chapter 3 by innovating the *shari'ah* compliant financial tools, the research would not be complete without discussing other factors in the enhancement of assets in the light of a *shari'ah*, administrative and governance approach in the management of *waqf* assets. This will take the potential of *waqf* assets to a new level. By analysing and proposing new changes, the issues clouding the predicament of *waqf* not only Singapore but globally, including other Muslims countries can be addressed.

This chapter will examine *waqf* management and administration in Singapore, and through this, highlight best practices and show avenues for improvement in all aspects of the administration, management and legal framework. This chapter will

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[129] Figure is based on *waqf* audited accounts for FY 2009, based on total assets waqf group figures..

[130] Figures extracted from Muis Annual Report 2008. For detailed income listing see note 20 of the annual report.

[131] Based on 2008 accounts of Masjid Mydin.

[132] Figures extracted from Muis *Waqf* Accounts for FY 2008. Income excludes the gain on fair value of property less expenses for the year. ($114,712-$$96,915=$17,797)

demonstrate that, to achieve a successful *waqf* institution, the structure, legal framework and management and administrative elements need to complement each other.

4.2 Historical background of *Awqaf* in Singapore

The first known *waqf* which was created in Singapore was the *waqf* of the Omar Mosque of Kampung Melaka which was endowed by the late Syed Omar Aljunied, a trader from Indonesia, who had probably originated from Yemen in 1820[133] (Ibrahim, 1965: 54) The first *waqf* legislation was passed under the British legislation in 1905. It was provided under the Muhammedan and Hindu Endowments Ordinance (chapter 27) enacted on 8th September 1905[134]. Most of the *awqaf* were created by the early settlers during the early 18th century, the spice route prevalent when merchants from Yemen and the Middle-East set roots here in Singapore and created *waqf;* the tradition which they modelled on from the rich *waqf* history in their native country. There were also *waqf* founders from the Indonesia Archipelago of Bugis descent examples of which are the *Waqf* of Hajjah Daeng Tahira Hj Daeng Tadaleh and some from India such as the *Waqf* of Ahna Ally Mohammad Kassim .

Most *awqaf* were created during the early migration of the Muslims in the late 19th and early 20th centuries. However, to date, there have been no creations of new *waqf* probably due to the following reasons:

i) Lack of information on the creation of *waqf* which has not been aggressively promoted

ii) Property prices have escalated beyond the means of many Muslim Singaporeans to bequeath property as a *waqf*.

iii) There are many other forms of donations which are aggressively targeted at Muslims in Singapore such as *madrasah*s, mosques with little promotion of institutionalised *waqf* funds.

iv) As every *waqf* is vested in Muis, those who are not comfortable with their assets being managed by a governmental body, and/or whose preference is to manage their own *waqf* without any interference from

[133] Ahmad Ibrahim, The Legal Status of the Muslims in Singapore, Singapore Law Journal Ltd;1965, p.54.

[134] The Statute of the Republic of Singapore, the Mohammedan and Hindu Endowments Ordinance 1905.

the authorities via self- appointed trustees or to create a *waqf* overseas, may not want to create one.

4.3 The legal structure of *waqf* in Singapore

Before the advent of the Administration of Muslim Law Act on 1st July 1968, all endowments were regulated under the Hindu Endowments Ordinance (Chapter 27) which was enacted on 8th September 1905.

When AMLA was created, Muis inherited ten endowments from the Muslim Hindu and Endowments Board[135](Ariff, 1991). In addition, the definition of a *waqf* was very important so its definition is shown in AMLA, part IV, and in section 56 of the AMLA. Several amendments have been made over the years to strengthen the regulation of *waqf* in Singapore further. One of the most important amendments was to include the registration of *waqf* in Muis under Sec.64 of the AMLA. Prior to this, there was no means for Muis to ascertain the existence of *waqf* assets. The amendments was done arising from the many problems posed by self-managed trustees, which involved cases of mismanagement, such as the selling of *waqf* properties and where beneficiaries complained about not getting their dues. There is no legislation by which to prosecute recalcitrant trustees as there was often no evidence of the status of the properties being *waqf* properties. Before the amendment of the law, there were only 28 *awqaf* recorded in the accounts of Muis. However, after the law on registration was passed in 1999, private self-managed trustees came forward to register their *waqf*. These are presently among the total of 99 *awqaf* on the Muis register.[136] There are, however, one or two *waqf* which are recorded as a *waqf* and where there are no trust deeds, wills or concrete documents to prove that a property is a *waqf*. In such cases, the properties need to be returned to the trustee and no vesting of a *waqf* can be done. After the amendments, the regulatory power to monitor a *waqf* managed by trustees became more efficient, as AMLA also provides for trustees to submit accounts and seek prior approval for any changes, purchases or sale of properties to Muis. For the first time in history, Muis have taken the trustees of *Waqf* Raja Siti Kraeng Chanda Pulih to task for not submitting proper sets of accounts being unable to ascertain the income and expenses of the said *waqf*, and for

[135] "Two of the *awqaf* have been dissolved. These are *Waqf* Khadijah in 1976 as it was no longer possible to carry out its provisions, and Wakaf Tantwalla whose terms and objectives are unclear." Extracted from Amina Tyabji (Ariff, 1991) See also Muis Annual report 1976.
[136] No. of *awqaf* as at Dec 2009, source Muis register.

failing to disburse to the beneficiaries.[137] The trustees of the *waqf* were eventually asked to resign following a court injunction and Muis is now the sole trustee.[138] As a result, Muis has the power to remove and appoint *mutawalli* as provided in Sec. 58 (4) of the AMLA.[139] There is also currently a lack of provision in the AMLA for Muis to act against a trustee whose appointment is created by the trust deed. Such removal of trustees has to be via the court procedures as there is no specific provision in the AMLA to remove a trustee who was appointed by the *waqif* through a trust deed. In this instance, the power of Muis to remove and appoint trustees was limited because the trustees were able to use the Trustee Act to challenge their appointment in court. Therefore, the need to revise the Trustee Act to support AMLA where *waqf* properties are concerned so that there is no conflicting provisions and/or where provision in the AMLA carries no weight as in this case.

AMLA has also limited provision in the case of the management and regulation of a *waqf*. Only broad definitions are given on assets which are *waqf*. All other administrative issues are covered under the internal regulations and management of *waqf*. Side by side with other *waqf* Acts, such as the *Waqf* Act of India and the Selangor *Waqf* Enactment Act, there are more clearly defined provisions for the management, administration and development of a *waqf*.

In order to carry out the *waqf* administration efficiently, it is necessary to provide clear *waqf* rules and regulations which currently seem inadequate.

AMLA Sec 58-64 provides for the *waqf* regulatory framework. It is a very simple law and has not encompassed many of the *waqf* regulations found in the *waqf* law in India and the more historical *waqf* laws in Turkey, Kuwait, Cairo or even Malaysia.

The deliberate effect of this simple law is to allow for more flexibility in the management of a *waqf*. Thereby, subscribing to the notion that enhancement to the *waqf* law can be done via other means such as creating regulations, internal policy and processes to improve the *waqf* management.

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[137] Case was heard in the High Court of Singapore dated 20th Oct 2003. Court has ordered the trustee to resign effective 31 Dec 2003 and all management of the *waqf* to be returned to Muis.
[138] Sec. 58(4) of the AMLA.
[139] Sec 58(4) covers the appointment and removal of existing trustees. The Act states that "The trustees of the *wakaf* or *nazar am* appointed under the instrument creating, governing or affecting the same shall subject to the provisions of this Act, manage the *wakaf* or *nazar am* but the Majlis (Muis) shall have power to appoint *mutawallis* and for such purpose remove any existing trustees, where it appears to the Majlis that the i) *wakaf* has been mismanaged, ii) there are no trustees , iii) in the interest and advantage of the *wakaf* to appoint a *mutawalli.*

The latest amendment to the Act was done in 1999 under Sect. 64. This amendment allows for the registration of a *waqf* which is created in Singapore. Prior to this, the records of *waqf* in Singapore were incomplete. Without such provision, anybody who creates a *waqf* may keep it to himself and not register it with Muis. As a result it will be difficult for Muis to ascertain the number of *awqaf* and to serve its regulatory role in ensuring that all *waqf* assets are reported accordingly. Prior to this, there were cases where some beneficiaries claimed that the *waqf* had been sold by the Trustees. In the early days, before the advent of the Act, the Singapore Land Authority (SLA) worked hand in hand with Muis to identify probable *waqf* properties through the deeds that had been lodged with SLA. However, the process is tedious and inaccurate at times.

As stated in the earlier chapter, the AMLA has defined both *waqf ahli* and *waqf am* and both must be vested under Muis. Hence all *waqf* properties should be named under Muis. This will ensure that trustees are not able to sell the properties without the prior approval from Muis. This acts as a protection for the *waqf* in ensuring that dishonest Trustees do not sell off the properties and pocket the proceeds. The exercise to convert all the properties has been done and now Muis, as far as the record in *waqf* registration is concerned, has all the assets converted under the name of Muis. The SLA has also allowed the inclusion of the *waqf* name in the title deed. Initially when this exercise was undertaken, there was huge dissatisfaction among trustees; as it meant even the leasing of properties needs to go through Muis as Muis is the 'owner' of the properties. Therefore lease documents need to be signed by the owner which creates too much control for some of the trustees. Any development and repair to the properties which needs the approval of a development licence needs to be lodge with Muis. This has somewhat slowed down the process and created unnecessary bureaucracy for the Trustee who is managing the *waqf*. However, Muis cannot avoid the role as it has to fulfil its regulatory role in the management of *waqf* – or, is there a better way to exercise regulatory control without being too involved in the administrative details of the *awqaf*?

In the definition it also states that a *waqf* can only be made by a Muslim. As discussed in Chapter 2, many other countries allow a non-Muslim to create a *waqf* as well. In respect of the *shari'ah* there is no issue for a non-Muslim to create a *waqf*. Therefore it is important to look at this aspect of the law if Muis is to embark on more contemporary and sophisticated *waqf* instruments, which, in future, may allow for non-Muslims to participate in this benevolent act while at the same time creating a new investment vehicle for everybody to participate in.

The virtue of vesting any *waqf* in Muis, has created some fear in rich Muslims who want to create the instrument of a trust in Singapore. They fear that the definition may constitute a trust as a *waqf*, and they neither want their trust to be made known to public nor do they trust the management of a *waqf* to be in the hand of Muis. There are cases of a trust being set up by Muslims which has not been declared as a *waqf*, as they would prefer it to be under the jurisdiction of the Trust Act.[140]

In addition to the provision of the Act for *waqf* above, there are regulations governing *waqf* registration as well. Internal policies are also crafted so as to control how a *waqf* should be administered, for example, in the sales and purchases of *waqf* properties. The *waqf* Act above is not as comprehensive as the act for *Waqf* in India and other Muslim countries which are more detailed. For example, the India *Waqf* Act specifies the conditions for a *mutawalli* and the manner a *waqf* can be created ("The Wakf Act, 1995," 1995). The Act details out the leasing and development criteria for a *waqf*. However, in the Muis case, the criterion for *mutawalli* is spelt out in the *waqf* internal guideline and policies. Because the Act does not allow for such provisions the legitimacy to carry out on any development or investment will need to be obtained via a fatwa opinion. Such steps may make the process of development slower. While there is more flexibility in each case, there may arise cases of inconsistency in the *shari'ah* injunctions and these may delay decision-making. While the notion of fewer provisions in the Act means greater flexibility, it also means less control and it may lead to abuse. For example, if Muis plans to expand its forms of m*utawalli*, in future further strengthening of the *waqf* Act will need to be incorporated.

4.4 *Waqf* administration in Singapore

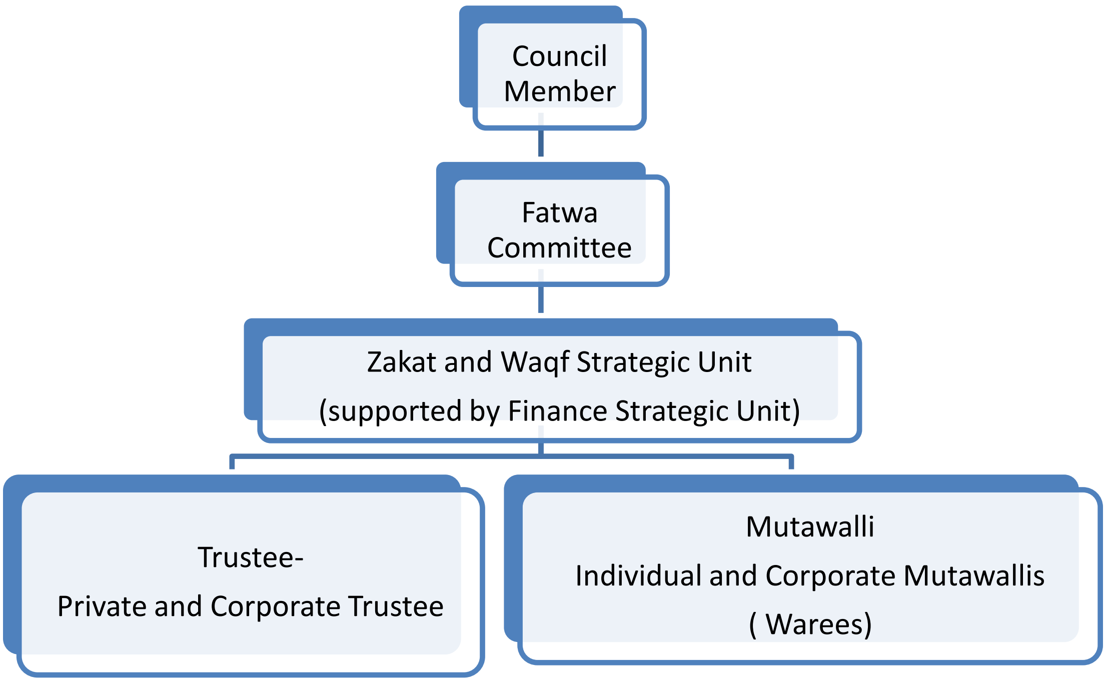
All *waqf* is vested under the Muis Ugama Islam Singapura (Muis)[141]. Muis is a statutory board which is under the Ministry of Community Development Youth and Sports (MCYS). It has a minister who is the Minister in charge of Muslims Affairs.[142]

[140] Based on interview; opinion given by a Trust lawyer.
[141] Sec. 59 of the AMLA.
[142] Currently the Minister in charge of Muslim Affairs is Dr. Yaacob Ibrahim who is also holding the portfolio of the Minister of State under the Ministry of Water Resources and the Environment.

4.4.1 *Waqf* administration structure

The *waqf* administration is under the Strategic Unit of Zakat and *Waqf* in Muis. All matters regarding the selling and development of *waqf* assets are first tabled at the directorate level and will then be elevated for decision-making at the Muis council level. Where there are *shari'ah* issues, the matter will be heard in the Fatwa committee. Any investments, purchases or financial obligations or implications which exceed $5,000,000 will need the Minister's approval. The organisational structure is depicted in diagram 4.1 below.

<u>Diagram 4.0: *Waqf* administration organisational chart</u>



Source: Authors own – chart is as at year 2010.

Note that the department which oversees the *waqf* administration which is under the zakat and *waqf* strategic unit of Muis also oversees the whole compliance with regards to the three types of administrator of the *waqf*. Hence Muis plays the regulatory role while the trustees and *mutawallis* will play the managerial role and need to report and seek approval for the selling and purchasing of assets. Annually, without fail they need to submit a full set of accounts to Muis within a stipulated time in accordance with the Act.[143]

4.4.2 Creating Muis wholly owned subsidiary to manage *waqf* assets.

Where there are no private trustees for a particular *waqf*, Muis becomes the trustee and engages Warees Investments Pte Ltd to act as the *mutawalli* to manage and develop the assets. Warees Investments Pte Ltd is a wholly-owned subsidiary of Muis to manage all *bait-ul-mal* and *waqf* properties.[144] Almost all the functions of *waqf* such as tenancy matters, development, sale purchases and the maintenance of properties are undertaken by Warees Investments Pte Ltd. By segregating the commercial function, Muis is able to focus on the regulatory roles and improve its corporate governance of a *waqf*. However, Muis needs to segregate further its roles as regulator and trustee of the *waqf* it is managing. Although Muis's wholly owned subsidiary company, Warees Investments Pte Ltd, manages the *waqf* on a corporate level, many decisions with respect to the *awaqf* still lie with Muis. For Muis to play a pure regulatory role, the management of *waqf* should be left with the private company who will act as a *mutawalli* in the management of the *waqf* assets and properties. How then will Muis be impartial and independent in its decision-making on a particular *waqf* if the *waqf* is also under the management of Muis? In a company set-up, the board is responsible to the shareholders; in this case should Muis be accountable to the beneficiaries? Besides an annual statutory reporting of accounts and a media release on the disbursement of a *waqf* 's income, there is no evidence of deliberate incorporation of process in the system to report on the beneficiaries' feedback and grievances.[145] (R. V. Leeuwen, 1999).

The setting up of Warees as a corporate company also raised issues as to whether the *waqf* will obtain the best service to ensure that it acts to give the best return to the *waqf* or for its own corporate gains? Warees received commissions for the services it rendered based on the gross income of a *waqf*. In this sense, Warees will ensure that it maximises the return for the *waqf* as its income is based on its

[143] Provision for the submission of account is stipulated in Sec.73 of AMLA
[144] Warees was incorporated in year 2001 with a paid up capital of $15 million and with an authorised capital of $50 million. Their functions include projects, facilities and lease management and advisory and consultancy in real estate development, investment and management.
[145] In the book of Al-Khasaf on *hukm al-ahkam* Khassaf sees the functions of the trustee as the representative of the founder, where else Al-Shaybani and Abu Yusuf see it as the representative of the poor or the beneficiaries. (R. V. Leeuwen, 1999)

returns. On the other hand, Warees also provides maintenance and development services for the *waqf*. Here, Warees will normally use government competitive rates[146] in quoting a fee services for the maintenance of *waqf* properties. For the development of properties or for marketing tenancy matters, market practice will be used and a mutual agreement, approved by the Muis council, will need to be obtained for any commercial project undertaken. In such cases, Muis will still need to come in to assess the profit distribution for the *waqf*. Warees can only be impartial if it does not perform the maintenance and the development projects. Currently, Warees does not undertake a project directly. For example, as a developer, Warees will call in all the tenders from each contractor, such as the main contractor, the architect, the quantity surveyor, and the soil investigation specialist. In this case there will be impartiality in the pricing process. Eventually, Muis will need to approve the tender that is awarded. In such a set-up a lot of the decision making still lies within Muis which may delay the execution process. In addition Warees is given a moratorium period for all Muis properties. That is Warees will be Muis sole agent in managing and developing its *waqf* and *bait-ul-mal* assets as prescribed in the management agreement for a specified period of time. This is in accordance with the government guidelines that the moratorium exception cannot last forever as it is against competition law.[147] Hence such a set-up will not be beneficial to Muis as it will result in having the *waqf* being managed by different entity. On the other hand, it will be beneficial to the *waqf* as it will result in competitive rates being quoted for the *waqf* once competition is opened. What about setting up a trust company to manage a *waqf*? Could this be the best solution for the *waqf* or should it be managed by a private trust company which is more experienced and would probably have many professional managers? In a country like Kuwait, they have set up a foundation instead which manages the *awqaf*. In South Africa it is a charitable organisation that manage a*waqf*.[148] In many other Muslims or Muslims majority countries like Malaysia, Oman and Qatar all management still lies with the state and like Malaysia

[146] Rates are based on Public Works Department (PWD) rates for maintenance of properties which are based on per sq foot area. This rates are used across many of the services rendered for the government buildings. Source Muis- Warees management agreement document.

[147] Competition law or called 'The Competition Act 2004 ('the Act') was passed by Parliament on 19 October 2004. The objective of the Act is to promote the efficient functioning of Singapore's markets and hence enhance the competitiveness of the economy. Accessed on 21 June 2010 at http://www.singaporelaw.sg/content/CompetitionLaw.html

[148] The most active *waqf* organisation in South Africa is the AWQAFSA. It is voluntarily run. There are also other organisation in South Africa which promotes the creation of *waqf*.

the *waqf* comes under the Islamic Religious Council of each state. Ergo to, there are not many variations in the administrative set-up of a *waqf* institution. Many endowments are set up based on the Trustee Act and managed by a pool of trustees or a foundation is set up to run the trust. Should the *waqf* institution be managed in this way?

4.4.3 Nationalisation of *waqf* institutions

There are strong opposing opinions for *awqaf* to be under the control of the state. Khaf and Kuran said the fact that *awqaf* are under government control, means a lot of misuse and stagnation of *waqf* properties are prevalent due to the government regulation (Kahf, 2007b; Kuran 2004). The *waqf* institution will thrive if it is left to the third sector to manage. There are many instances where private trustees have misused *waqf* assets and many trustees are not professionally qualified to manage the *waqf* some of which entail multi-million assets. As in many asset management outfits, it is important that the advantage of economies of scale and expertise in managing assets are undertaken. A private trustee with no expertise and very little capital will not be able to turn round an asset such has been done in the Bencoolen Street project cited in Chapter 3. In many of the Muslims countries, the governments are listed as some of the most corrupt countries in the world.[149] (Chapra, 2008; International, 2007) It is because of this that the regulatory role and the efficient management of *waqf* assets cannot be executed efficiently. The Singapore government is rated as fourth in world rankings as the least corrupt country (International, 2007). It also has one of the highest per capita incomes of US$33,919.[150] Government effectiveness is rated at 100% by an international government indicator. It is this efficient management and stringent regulatory environment that has made the system very efficient.

While Singapore has been effective in recent governance issues, at last history has shown that a large parcel of *waqf* land and properties has been eroded and income been curtailed in the early part of this history. Nationalisation of land became part of

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[149] According to the 2007 Transparency International Corruption Perception Index, majority of the Muslims country score less than 5. (the ratings are in the range 10-0 , 0 being the most corrupt). 180 countries are rated. None of the Muslims country is in the 10th percentile range. Most are in the 50th percentile range and above. See index as assessed in http://www.transparency.org/policy_research/surveys_indices/cpi on 19 Sep 2008.

[150] Figure is based on the year 2007 assessed through http://www.singstat.gov.sg/stats/themes/economy/hist/gnp.html on 19 Sep 2008.

the Singapore landscape in the early 50's, and many *waqf* assets were acquired to make way for Singapore's development. By the 1980s, the government owned 80% of the land (Brown, 2008). It was able to do this via the Land Acquisition Act. [151] Much valuable *waqf* land was acquired during this time. To compound the problem further, the Rent Control Act has further curtailed the rental income accrue to these properties. As a result most of the *waqf* property is in a dilapidated state and beneficiaries are unable to benefit from the income due to the paltry amount received from the rental of the properties. Rental income received was very low. Take for example *Waqf* Ghaffor. In 1983 rental income was as low as $52[152] per property per month and a yearly income of $6,216.[153] By 1997, before development, rental was still a mere $21,466[154] a year. However by 2008, the annual rental reported was $176,755[155].

4.4.4 Variation in trustees and mutawallis

In Singapore, there are private trustees and corporate trustees managing the *awqaf*. The private trustees are mostly relatives or descendants of the late *waqif*. With respect to corporate trustees, there is only British and Malayan Trustee (BMT)[156], which is a Singapore trust company that manages four *awqaf* in Singapore. This happened because BMT predates the establishment of Muis. There are in total 32 *awqaf* managed by 24 private trustees other than Muis. They account for 32% of the total number of *awqaf* in Singapore.[157] In terms of assets, they represent $171 million which is 50% of the total *waqf* assets. The privately managed *awqaf* have some very large *awqaf* under their management.

In Singapore, as has been discussed earlier, there are three variations in the way the *awqaf* is managed. First, via a public listed company - BMT is a public listed trust company which manages the *waqf*. Second, the private trustee, who manages

[151] Land Acquisition Act.
[152] The rental figure was calculated based on an annual rental of $6,216 divided over an estimated 10 properties for the Ghafoor fund. There is a total of 21 properties based on the property listing. However, only 10 properties are used to give a conservative figure. Therefore rental per month might be lower than the amount reported.
[153] Rental figure was based on Muis Annual Report 1983
[154] Rental figure was based on Muis Annual Report 1997
[155] Rental figure was based on Muis Annual Report 2008
[156] BMT was incorporated in 1924 in Singapore and is the oldest trust company listed on the Stock exchange in Singapore. (www.bmtrust.com, web accessed on 20dec 2007. The 4 *awqaf* they are managing are: AMS Angullia, MSE Angullia, Sh Salleh Obeid Abdah and Agil Sallim Al-Asree
[157] Source Muis and Muis Annual Report 2008.

and runs a *waqf* in a family set-up. Third, a wholly owned subsidiary of Muis, Warees Investments Pte Ltd who manages the rest of the *waqf*. In all three, there are advantages and disadvantages in the way a *waqf* is managed. However, it should be noted that whatever the organisational set up, the *waqf* should be the one which benefits.

The Muis functions for the *waqf* should be very clear: Muis should perform a regulatory role only as this is important to ensure that a *waqf* is managed properly. Charities in Singapore are also accountable for all their monies. They are accountable to the Comptroller of the Charities[158] ("Charities Act," 2007). Likewise whatever the outfit that is created by the *waqf*, should be accountable to Muis; and, of course, Muis will be accountable to the beneficiaries and trustees. These governance issues are important to ensure that all institutions of *waqf* are protected.

For example, in the monitoring of the trustees or *mutawalli*s, all the appointments of trustees and *mutawallis* have to go through Muis for approval. The same goes for any retirement of trustees. This monitoring is necessary to ensure that records of the trustees or *mutawallis* managing the *waqf* are centrally documented and kept.

A platform for periodic meetings and checks on *mutawallis* and trustees to update on latest development of the *waqf* is part of the feedback mechanism. Many of the private trustees have come to seek Muis help in the development of their *waqf*. Hence joint development has been carried out with the expertise emanating from Warees to spearhead the development.

There are legal provisions in the AMLA in Sections 58 to 64, where matters relating to *waqf* administration are provided. These provisions include the vesting of a *waqf*, the registration of a *waqf*, the financial provision for a *waqf*. In respect of the other regulations and policies on *waqf*, internal policy and workflow documents are prepared to provide the general guidelines in matters relating to the administration of *waqf*.

In terms of the administrative strive for excellence; Muis has achieved an ISO 9001 for its management and administration of Muis *waqf*. Muis is constantly striving to improve its excellent management systems. It has achieved the mark of the

[158] Refer to Charity Act.

Singapore Quality class[159] which marks the commitment of the organisation in meeting excellent standards in its processes, leadership, attitude to customers and result-oriented achievements.

While there are rigorous processes to achieve customer satisfaction, there should be more transparency and a platform for beneficiaries to also be active in the management of the *waqf*. This can be done by holding more meetings and feedback sessions for them.

4.5 *Waqf* management portfolio in Muis.

There is a total of 99 *awqaf*, 32 are trustee-managed while 67 are managed under Muis through Warees. Most of the *awqaf* are created in the early years, and no new *waqf* was set up ever since 1950.[160] Total assets under management for the whole of *waqf* funds as at December 2009 were $474 million[161]. The breakdown of *waqf* assets is as follows:

Table 4.1: Types of *waqf* assets as at 31 Dec 2008

Assets type	**Amount ($)**	**%**	**Remarks**
Properties	397,559,291	83.9	Investment properties
Cash and cash equivalent	65,004,608	13.7	Includes short- term deposits and receivables
Available for sale financial assets	11,110,359	2.3	Quoted equity shares at fair value
Total	**473,674,258**	100%	

Source: Muis FY2009 Annual Report

Table 4.1 clearly shows that properties form the bulk of *waqf* assets, comprising almost 84%. The cash component of 13% which also includes a capital amount which is kept in fixed deposits is mainly used for disbursement purposes. There are 15 cash *waqf* with no physical assets. The cash *waqf* exists due to the acquisition of its properties by the government for national development process. The compensation money was for many years placed in fixed deposits and other investment instruments. However, in 2000, with the opportunity to hold shares in the acquisition of properties through a company called Fusion Investments Pte Ltd, most of this *waqf* capital has been invested. Before this, with a capital of $20,000 it was

[159] SQC-Singapore Quality class is a mark recognising the excellent institution in meeting high customer service standards.
[160] The last waqf was created in 1950's, (need to check name and exact year of the waqf).
[161] Figure based on Muis Annual Report FY2008.

not possible for a *waqf* to own properties. However, with this new vehicle, a *waqf* with only $20,000 capital is able to own a piece of the property at 11 Beach Road through a shareholding in the company which owns the asset. This vehicle has also made it possible for the *waqf* to shy away from non-shari'ah compliant investments such as fixed deposit and bonds.

In property investment, as in other investments, there are two ways in obtaining a return. One is through the rental that is the income flow; the other is through capital gains which is an appreciation of a property's value. In property, the latter usually results in high capital gains for the *waqf* as a whole; many examples can be extracted from the figures in the annual reports of the *waqf* accounts of Muis. For example, the value of the piece of land at Bencoolen without development was a mere $5 million. However, with development the whole property is now valued at $81,640,000[162]. With a capital investment of $25 million, the total value of the said property saw a huge gain of $50 million. This goes to show that development of a *waqf* site, if properly planned and executed can result in a multi-fold gain, not to mention the annual income attributed to such properties.

However, there are some properties where the development costs take years to recover. An example is the case of *Waqf* Jamae. It took the *waqf* almost 16 years to recover the loan it undertook from *Bait-ul-mal* (the General Endowment Fund). After 16 years, the *waqf* will need money again to refurbish both the commercial and the non-commercial properties, such as the mosque. Hence, the rental income it receives over time will not be sufficient for the beneficiaries. Please see the example below of *Waqf* Jamae and the refurbishment of 15 properties.

Table 4.2 : Refurbishment of *Waqf* Jamae properties.

	Amount ($)	**Remarks**
Refurbishment cost	5,300,000	Estimated amount – refurbishment done in 1994.
Net Rental income	1,057,512	Based on 2009 net income excluding gain on fair value of property.
Provision for disbursement Repayment of loan based on 80/20 policy	$211,502	Policy of repayment of loan is to pay 80% loan and 20% provision for disbursement
Balance of loan in FY 2009	633,272	Based on FY 2009 accounts
Balance on the no. of years for loan repayment	Loan will be fully recovered in 2010	Based on 2009 net income and the above policy; that is yearly about $846,010 are paid for loan.

Source: Muis Waqf Accounts 1994,1995,2008,2009 (Muis Annual Report)

[162] Based on valuation done by Chesterton Suntec International Pte Ltd as at 31 Dec 2008.

The amount of $211,502 to be given yearly to the beneficiaries is just sufficient to meet the mosque's yearly expenses. The beneficiaries of the waqf include the maintenance of the mosque and the salary of the imam. The income for the mosque only suffices to run the daily operation of the mosque. However, over time, the mosque which will need restoration on its run- down building will need substantial amount of funding to restore it. It is, therefore, very important from the onset to determine the return on the investment and the requirement of the beneficiaries. However, there are also limitations to the kind of development that can be undertaken. For example, many shop-houses are under the conservation restrictions, meaning the properties have to comply with conservation requirements which may limit on the built up area that is the space expansion needed for the property. Rental income is therefore limited to the area that can be rented out. The question for such properties is whether it is more beneficial for the properties to be redeveloped and refurbished or to be sold based on the *istibdal* process and to use the sale proceeds to purchase a property with higher yield and capital gains.

These are some of the difficult questions that need to be addressed when undertaking development of a *waqf* property. There is also resistance among the family members and/or beneficiaries to some development or *istibdal* processes, unless a very concrete case can be put up to show that the properties need to be relocated.

Properties like the one in Desker Road, which is infamous for its promiscuous activities, was identified to be sold and relocated to other areas. The decision for *istibdal* for this property was very obvious and necessary as a *waqf* cannot tolerate any *haram* activities on its premises.

In the case of the 11 Beach Road transactions, a number of *waqf* properties were also identified for sale. These properties were all identified due to the development limitations, location problems and will give low yields even after refurbishment. All the properties identified are of the shop-house type.

It is, therefore, very difficult to determine what yield will remain for the properties identified. Circumstances change, therefore it is very important that the managers are alert to the property market where market changes affects property values and yields.

Furthermore, the income for each of the property classification needs to be analysed. Based on the financial year 2009 accounts, Table 4.3 shows the breakdown of the income from the *waqf*. The rental income has increased moderately by 6.6% from 2008 to 2009 due to the buoyant property market.

Table 4.3: Extract of *waqf* income 2009 & 2008.

Income	**FY 2009 ($)**	**% of total income**	**FY 2008 ($)**	**% of total income**	**Incr/ (decr) (%)**
Rent	11,720,145	81.73	10,989,922	76.95	6.6%
Interest	242,413	1.69	733,377	5.13	-66.95%
Dividend + Investment gain	2,357,317	16.44	1,430,816	10.02	64.75%
Others	19,496	0.14	1,128,630	7.90	-98.27%
Total	**14,339,371**	**100**	**14,282,745**	**100**	**0.40%**

Source: Muis 2009 (note 20) audited *waqf* Accounts

Table 4.3 shows that the bulk of the income is from rents, while some comes from investment type products. The accounts show the interest received as most of the cash is held on short-term deposits which are currently not *shari'ah*-compliant. However shares held by the *waqf* usually fit the *shari'ah*-compliant criteria such as technology stocks and other commodity stocks.

Given an assets value of the total portfolio at about $473 million, the return on the portfolio at $14.339 million constitutes a gross return of about 3.03%.

This is considered low, even though there are 6 assets which have been given a nominal value. The reasons for the low yield are firstly, there are still rent-vacation periods for some of the properties. Secondly, the expenses incurred to maintain the properties can be very high. Table 4.4 will show the different asset yields of the *waqf*.

Table 4.4: Yield comparison by different types of *waqf*, managed by different groups of trustees and different mixed of assets classes.

Waqf	Total income[163] FY 2008 ($)	Expenses FY 2007 ($)	Net income FY 2008 ($)	Yield (%) FY 2007 ($)	Assets value ($)
1. *Waqf* Jamae – Muis managed shop-house properties in central area, self development	1,344,802	390,590	954,212	**3.30%**	**28,876,463**
2.*Waqf* Hjh Daing Tahira – investment in 11 Beach Road (internal *waqf* REITs, went through an *istibdal* process to gain higher yields (Muis managed)	321,777	4,660	317,117	**3.84%**	**8,256,264**
3. SMA Alsagoff Fund- trustee managed and own development initiative	1,688,765	577,570	1,110,895	**1.57%**	**56,127,914**
4. *Waqf* of MSE Anggullia – trustee managed and investment in both properties and shares	1,769,551	365,286	1,404,265	**8.08%**	**17,372,160**

Source: Muis management report and audited account FY 2008.

These figures show that the rental yield for each type of properties varies. *Waqf* SMA shows the lowest return. This is a trustee-managed *waqf* and development was undertaken by the trustee himself. The management of this *waqf* is based on two trustees managing the *waqf.* The lack of investment capital and professional background may inhibit the kind of yield that can be generated from the properties held. The highest return achieved by Waqf MSE Angullia was due to the gain in sale of its investments in shares[164]. This gain depends on the performance of the market

[163] Total income excludes gains on property

[164] The exceptionally high yield for MSE Angullia for the period 2008 is due to the gain on sale of its investment in shares. It is important to note that what policy should be in place when disposing *waqf* assets. Should any gain in value be recognised as the *waqf* capital or should it be distributed to the beneficiaries? Currently the gain in value is classified as capital and will not be used to distribute back to the beneficiaries as this capital need to be reinstate later.

which may not be consistent over the years. The second highest return being the *waqf* of Hajjah Daeng Tahira is fully invested in properties. The *waqf* went through an *istibdal* process and participated in the purchase of a single high-yield property. Analysing Table 4.3 above there are many factors which will affect the *waqf* yield. It is not simply just underpinning the yield with low quality properties other factors also contribute to the performance of the *waqf* assets. These are some of the factors which can contribute to the ultimate yield of the assets.

i) The quality of *waqf* assets
ii) Undertaking the process of *istibdal*
iii) The *waqf* operational structure -trustee managed, Warees or under BMT?
iv) Huge *waqf* assets or a single *waqf* 's assets
v) Property versus other asset class allocations
vi) Restrictions prevalent in the will of the *waqif*
vii) The use of innovative finance

Therefore, further analysis needs to be undertaken to create a matrix that will produce high-yield assets for a *waqf.*

Interestingly, while investment in properties gives a lower yield when property prices increase, the essence of a *waqf* is to obtain a long-term yield as it is perpetual in nature. Hence, according to Nuffield research(Nuffield, 5 Mar 2007), a study was done to find out the different yields for an endowment trust fund. This was based on a Nuffield endowment investment. Careful investment objectives need to be established for a *waqf* to produce superior or, according to its risk profile, a modest return. In order to do this, a proper asset allocation strategy should be applied to *waqf* investments.

4.6 Investment objectives of a *waqf*

There are several cash *waqf* in Singapore. The cash *waqf* exists due to the compensation money received during the national development exercise during which *waqf* properties were acquired. The small amount of cash has a limited investment capacity, the cost of maintaining these *waqf* escalated, and as a result, the capital has eroded over time.

However, recently, the cash *waqf* has been pooled together to buy a piece of property at 11 Beach Road, the cash *waqf* has now been converted to own a share in this property. The perception of a *waqf* owning physical assets still seems a more secured investment than leaving money in cash and investing in stock and shares or other alternative cash investments. So far, no cash *waqf* has been totally terminated due to the erosion of its capital. However, the smallest amount of assets kept with Muis amounts to a mere $1,132[165]. It was decided that this *waqf* should still retain its perpetuity clause. Expenses for such a *waqf* where its expenses exceed its income are waived and absorbed through higher shares by other *awqaf* or subsidised by *Bait-ul-mal*.

Looking at the above investment initiative, what are the better options for *waqf* investments? Should *waqf* investments be placed solely in property or should they go through the same investment exercises and be subjected to the investments criteria set by trust funds. Take for example Nuffield investment trusts. In investments, the need to define the objectives is pertinent. So what are the investment objectives for *waqf* funds? Are they to generate income flow or to enhance capital so as to generate higher income flows? Since a *waqf* needs to preserve its capital, what is the risk-return profile that it can perform? Does it invest for the long term horizon, the intermediate or the short in order to make quick profit? These are very important questions and guidelines need to be set for *waqf* investments objectives before investment decisions are made. Although for a statutory board like Muis, the investment guideline is for capital preservation investment guideline. Currently, there are no clear specific guidelines on *waqf* investments. Investment decisions are taken on a project basis and, for cash investments there should be a benchmark which is used for all investment portfolios to try to ensure that it outperforms the inter-bank rates[166]. In a Nuffield investments seminar, Jim Garland from the Jeffery Company, Ohio, made a study to show that different investment institutions could be differentiated by their time horizons and so lead to different investment strategies (Nuffield, 5 Mar 2007). Refer to Table 4.5.

[165] The net capital of *Waqf* Sh. Abdoon. Figure extracted from FY 2007 *waqf* audited accounts.
[166] Based on an interview with Muis officer.

Table 4.5: Matching investment horizon with investment strategies

Time horizon	What matters
Immediate	Market values
Intermediate	Market values and income
Perpetual	'Income'

It stated that where the time horizon is perpetual, the importance of market value is reduced and income is of the utmost importance and, since income has many meanings, he used the term the 'fecundity of the portfolio' which means that, as quoted by him" the amount of cash the fund can provide for its current beneficiaries without endangering the fund's ability to provide similar amounts of cash, in inflation adjusted terms, in perpetuity" (Nuffield, 5 Mar 2007).

According to him, to have a formula on the endowment sustainability is to have a spend rate of 130% of dividends (based on 100% US equity portfolio). Based on this formula, if the current yield on S&P is 1.8%, then the fecundity of the index should be 130% of 1.8 which is 2.3%. He argued that this method and hypothesis depends on a healthy economy supported by good legal, political and social institutions and a culture of paying stable dividends.

Nuffield has similar financial objectives, but lists capital preservation first and spending stability second; while Jeffrey Company lists spending stability first.

Taking the *waqf* as an example, a few samplings of the *waqf* funds will be taken to show how much each *waqf* needs to make to ensure sustainability. This sampling and the calculations will be shown in the subsequent analysis chapter. Although the above examples are used to show the different ways of stating the investment objectives and hence the investment strategies adopted, the same can be applied to a *waqf* but with its own unique sets of criteria. Following this, the Kuwait Awqaf Public Foundation shall be looked at to examine the investment criteria and objectives in order to make inferences later.

The Kuwait Awqaf Public Foundation (KAPF) has its own criteria on investment. These are as follows:(Busharah, 2008)

1) Minimise risk and capital protection
2) Diversification of investment instruments - different portfolios
3) Diversification in sectors, eg financial, real estate and services.

4) Diversification based on geographical locations
5) Sets investment ceilings for each sector.

KAPF tracks its capital appreciation as well as its income flow. In 1995 it reported a capital of KD105 million and an income of KD10.5 million.(Busharah, 2008) In 2006, its capital appreciated to KD170 million and an annual income of KD17 million. This shows a remarkable increase in both the capital and income of its *waqf* assets. KAPF investment distribution also varies; 41% of its *waqf* assets are in the financial sector, 52.6% are in the real estate sector and 6.4% in the services sector (Busharah, 2008). It has also diversified its portfolio geographically and 13% is invested outside Kuwait. Hence, it can be observed that the *awqaf* are not placed heavily in the traditional real estate sector. The above findings show that diversification, asset allocation and capital preservation are important criteria for KAPF *waqf* investment objectives and, as a result, have brought success to their overall investment portfolio of *waqf* assets.

According to Robert Hayes[167], the endowment had to consider two fundamental questions: first, what was expected of the money; and second, what were the appropriate definitions of risk? (e.g volatility of total return, loss of capital, spending impairment etc). What was the trustee's approach to protecting the distributions against the risk (Nuffield, 5 Mar 2007). Hence the following questions should be asked by the trustees about the overall investment strategies for the *waqf*;

1) If capital preservation is very important in a *waqf*, what is the risk level the *waqf* should take to increase its capital and income capacity?
2) If distribution to beneficiaries is very important, does the *waqf* income flow meet the needs of the beneficiaries?
3) Is *shari'ah*-compliant investment important or mandatory for the *waqf*'s investments?

In the analysis chapter, the responses from the various trustees, Warees administrator, and the religious scholar and the trust administrator as to how the investment strategies and objectives should be prioritised will be sought.

[167] Strategic Advice, Blackrock (Nuffield, 5 Mar 2007).

4.7 Management of the beneficiaries

While maximising returns is important for *waqf* assets in order to provide for its beneficiaries and to gain sustainability, here we will examine how the proceeds from the *waqf* are disbursed in Singapore. Muis conducts an annual disbursement exercise to ensure transparency and consistent accountability to the beneficiaries. This is done usually after the audit of the accounts. However some disbursements are made early as provisions are made for the last year's income to be paid. There are two types of beneficiaries: one is named by the *Waqif,* and allows no changes unless the beneficiaries no longer exist; the second is where the beneficiaries are more general and hence a committee is formed to decide the charitable allocation to the desired institution.

In making allocations, the following principles are adhered to.[168]

1) To follow religiously or closely the allocation and beneficiaries as stipulated in the *waqf* deed.
2) Where the beneficiaries no longer exist, a cy-près doctrine[169] is created and a *fatwa* is obtained to vary the intention but to still follow closely the original intention of the *waqif.* For example, if the allocation is to provide for the poor in a particular mosque, if the mosque no longer exists, then allocation may be made to the poor in a nearby mosque.
3) Priority of needs

   Where an allocation is to be given in general to mosques or a charity, then the first principle to look at are the needs in the society. The *waqf,* being part of the whole economic and social system in the community, should not ignore the general needs of the society. If the need is to provide Islamic education then deliberate allocation will be made to align with the community's overall strategic plans to tackle this issue. However, where family members of a *waqif* have indicated their preference for the custom (*urf*) of charity carried out

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[168] These guidelines are internal policy from the Zakat and Wakaf Strategic Unit in Majlis Ugama Islam Singapura. The guidelines may vary in the next year based on feedbacks and recommendations for changes if any by the *Waqf* Disbursement Committee.

[169] Cy-près doctrine is a legal doctrine. The term can be translated from the old Norman French to English to mean "as near as possible" or "as near as may be". This is applied in the charitable trust ; when the original objective of the settlor or testator became impossible, impracticable or illegal to perform the doctrine allows the court to amend the terms of the trust as closely as possible to the original intention of the testator or settlor. Explanation extracted from http://encyclopaedia.thefreedictionary.com on 28July 2010.

by the *waqif,* which does not contradict with the overall intention, then such *urf* will be respected and disbursement will be based on the *urf* of the founder.

4) Seniority

This is related to *waqf* khas in which, after applying the principles 1,2 and 3 above, if, ceteris paribus, there are two poor relatives, the senior relative will receive the benefit first.

These guidelines are also in line with those of the early *fiqh* scholars on the disbursement issues of *waqf*. For example the decisions in (1) and (2) were also advocated by the famous *waqf* jurisprudence in *kitab ahkam al-awqaf* by Abu Bakr al-Shaybani al-Khassaf (R. V. Leeuwen, 1999; Verbit, 2008).

92% of disbursements are for local beneficiaries while the rest are disbursed based on the *waqif's* original country. The breakdown of *waqf* disbursement in Singapore is shown on Table 4.6 below.

Table 4.6: Disbursement due to beneficiaries by country in FY 2008

Country	%
Singapore (Local)	92 %
Middle East	4%
India	2%
Indonesia	2%
Total	100%

Source :Muis – Zakat and *waqf* Strategic Units

There is no problem in disbursements to local beneficiaries. However, for overseas disbursements the task is quite challenging. Where possible, an agent will be recruited to make the disbursement on Muis behalf. For example, in the case of disbursement in Hadramaut, a local Hadrami is employed to make it as he will be more familiar with the place and the community there. Where family members are concerned, representatives from the family members will be appointed to act on their behalf. Systems have been put in place to ensure that the amount and the rightful beneficiaries received their *waqf* income.

The problem encountered is often the family *waqf* disbursement. The family tree gets bigger and after a few generations, the problem of tracing the individual members becomes very daunting and difficult. As mentioned in Chapter two, Cairo and Syria do not allow the creation of family *awqaf*. In India they are only allowed for 2 generations at most. Hence, Singapore may need to look at family *waqf* creation and how it can be better managed. It is definitely not possible to disburse to the family members where the family trees have become hopelessly complicated. The cost of disbursement may outweigh the income the *waqf* can provide to the beneficiaries. Hence, this will create a burden on the *waqf* to continue to provide for its beneficiaries. Beneficiaries will not be satisfied as the amount provided to them will be very small. A case in kind can be cited from the *waqf* of Hj Daeng Tahira Bte Haji Daeng Tadaleh. The *waqf* provides for poor relatives in Indonesia.[170] The family members have been traced and they are in different locations in Indonesia. One family is in Matapura a very remote village in Indonesia, one in Surabaya and the other family is in Jakarta. The problem of disbursing the amount has become very difficult. The preliminary task is to ensure that they are the right beneficiaries; secondly the administrative matters need to be established such as the opening of a bank account. The amount given annually to them is quite small because of the sheer number of people involved. This has inevitably led to the increase in administrative costs to the *waqf*.

Therefore, in such cases, another look at the creation of a family *waqf* needs to be done to establish guidelines such as restricting it to two generations only or to leave it to family members to manage by themselves without having it under the ambit of the AMLA. From the table above, the distribution to other countries signifies the origin of the *waqif*. These philanthropists created *waqf* not only to help the community here in Singapore but to allow also repatriation of income for the welfare of their communities in their country of origin. What are the possibilities of Muis globalising and marketing its *waqf* product overseas? As can be seen in Table 4.7, the value of the *waqf* here is higher than its value in their home country. Singapore is also a safe haven for investments as it has a strong legal and government infrastructure. Creating a *waqf* here and disbursing its income to their home country can be an option for some philanthropists.

[170] Source – Muis *waqf* deeds.

In this respect it is advantageous to market international *waqf* funds and utilise the *waqf* fund to be applied on a global basis having Singapore as the base country to establish and manage its fund. This is one approach to expand the stagnating number of *waqf* available in Singapore.

4.8. The economic, social and religious impact of *waqf* in Singapore society.

The disbursement pattern and allocation created by *awqaf* determine the kind of social and religious provision created for the society. From table 4.7, the highest percentage of the types of beneficiaries is the mosque.

Table 4.7: Amount allocated by types of beneficiaries in FY 2008 (by %)

Types	**%**
Mosques	45%
Education	26%
Madrasah Religious School)	13%
Poor and Needy	9%
Others	7%
Total	**100%**

Source :Muis – Zakat and *Waqf* Strategic Units

Most of the *awqaf* are created for the purpose of building and maintaining mosques. The *madrasah* is another popular choice for a *wakif*, followed by the poor and needy. While traditionally mosques and the poor and needy are the favourite beneficiaries, the future creation of *awqaf* needs to take into account the community needs in the country. For Singapore, it is important that *awqaf* are also aligned with the community's aspiration and needs. If not the *awqaf* will not be able to fully serve the social, religious and economic needs of the society. The role of the Islamic Religious Council is, hence, important to educate the public in their creation of *awqaf* in order to achieve these objectives and ensure they serve the test of time. In view of the disbursement pattern of the *awqaf* in Singapore, what impact does it have on Singapore society?

The creation of mosques by the early philanthropists has served the religious needs of Muslims in Singapore. A mosque is a very crucial and important institution where Muslims are concerned. Now there are 70 mosques in Singapore, which not only provide for the religious needs of the Muslims in Singapore but have become social centres and, recently, an interfaith centre for the non-Muslims to learn about Islam[171]. All of these are playing a part in the overall nation-building of the country. As one of the attributes of the Muslims in Singapore which the Islamic Religious Council propagates is that a good Muslims is one who promotes nation-building.[172]

Besides the mosques, there are 6 full-time *madrasah* of which 4 were created through the instruments of *waqf*. This is an important institution to produce the religious leaders needed in Singapore to lead in the religious affairs of the Muslims in Singapore.

Another social objective is the distribution of assistance to poor and needy, for medicine, for scholarship, for burial purposes and other general acts of charity.

The economic contribution can be clearly seen through the various developments undertaken as mentioned in the earlier section of this paper.

The earlier example on the development of *waqf* properties has created wealth, aided development, promoted employment and galvanised many other economic activities by embarking development. First, the opportunity is now open for Muslim investors to invest in fixed-income securities in a *shari'ah* compliant manner. Among these investors are the mosques and Islamic institutions. Second a once dilapidated *waqf* with its run-down mosque has been restored and now receives a steady stream of income. Third, the setting up of the service apartments has given rise to the employment of many people in the service sector. Fourth, the creation of more *halal* restaurants is giving the Muslims community more *halal* options.

As Michael Hodgson (1974:124) mentioned that *waqf* is a primary "vehicle for financing Islam as a society." Although in the case of Singapore, the institution of *waqf* has not entirely been able to finance the whole economic and social sphere for the Muslim community, it has and does contribute significantly to the religious life of the community in Singapore.[173]

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[171] Al-Nahdhah mosque situated in Bishan, is one such mosque which integrates a harmony centre in its building. The harmony centre serves as an interfaith centre to understand Islam better. Assessed through the website: http://www.mosque.org.sg/an-nahdhah/index.php on 2nd April 2008.

[172] Muis 10 attributes of a Singaporean Muslim- assessed through Muis website at http: www.muis.gov.sg on 19 Sep 2008.

[173] Besides *waqf*, Muis zakat fund does help the social and religious needs of the community. In total about SGD$35 millions are raised annually from the Muslims public. These are used mainly for the religious and social needs of the community. The Muslims are also under the social net of the Singapore government, hence there are many national resources which can be used to help the

4.9 Other mechanisms used in the creation of *waqf*- the case of *waqf* mosque

In Singapore, there are 13 mosques which were created by the traditional method of creating a *waqf* through a *waqf* instrument and *waqf* deeds. Hajjah Fatimah Mosque and Omar Kg Melaka Mosque are examples of rich philanthropists who have funded the building of this mosque. The former is a rich lady by the name of Hajjah Fatimah and the later is the rich merchant Syed Omar Aljunied. However, there seems to be a dearth of rich philanthropists who is able to donate a single mosque now in Singapore. These may be due to a couple of reasons. Firstly, the high cost of building a mosque. Each mosque now cost about $10 million to be built[174]. Second, most of the rich Arabs or overseas Muslims prefer to donate to the less-developed neighbouring countries such as Indonesia, Thailand and Cambodia as the cost of building a mosque there is extremely cheaper. Due to the lack of a single rich donor, public contributions are the solution to the building of more satellite mosques in Singapore. Such a pooling of cash funds is made possible by the Central Provident Fund Board or CPFB[175] mechanism which allows for contributions to mosque funds. The CPFB collects the monthly contribution of the employee pension fund through the payment made by the employer. The employer deducts a certain portion of an employee's salary to contribute to this fund. This is like a pension fund. The CPFB is an agent of collection for the Mosque Building and Mendaki Fund(MBMF)[176] which is in proportion to the salary of the workers. Contribution is voluntary, and part of an opt-out system, meaning, if an employee does not want to contribute, then he can opt-out. There are approximately 180,000 Muslim employees who contributed to this fund.[177] This translates to about $500,000 a month which translates to about $6 million a year. Hence it is possible to build a mosque in alternate years. So by making such contribution, the Muslim public in Singapore is actually participating in the creation of a *waqf* mosque. However this fund is not classified under *waqf* but as a separate fund called the Mosque Building Fund. Should the mosque under this fund

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community under the social angle. However the government does not provide any aids for religious purpose as Singapore is a secular state country.

[174] Based on cost of mosque at Sengkang – cited from Muis internal brochure and cost posted at the website www.muis.gov.sg assessed on 9 Sep 2008.

[175] CPFB is a statutory body providing the Singapore residents with a national savings scheme for Singaporeans to enjoy a secure retirement. Their website can be accessed through http://mycpf.cpf.gov.sg/CPF/About-Us/Mission-and-Vision/Mission.

[176] MBMF fund is created under 76 of the AMLA. The latest amendment to the Act was done in Aug 2008 to include the provision for the maintenance of mosques as well as for the development of the religious schools or *madrasahs* in Singapore.

[177] Based on CPFB monthly report.

be classified as a *waqf*, since it has a characteristic to be classified as one? Once the mosque is established from the pooling of funds, then a *waqf* account should be created to show its income and expenditure.

4.10 The marketing and promotion of *awqaf*

There has been little effort put in to the promotion of *awqaf* in Singapore. The many *waqf* concepts that have been promoted are for a mosque *waqf* where it is more a concept of *infaq* rather than the proper process of creating a *waqf*. This concept such as buying a piece of furniture or to donate parts of a building, has been initiated by many *madrasah*s and mosques in Singapore. This donation is not recorded as part of the *waqf* that is currently maintained in the register of *waqf* in Singapore.

According to the Muis statistics less than 1% of the Muslim population earns less than $5,000[178]. There is only a handful of Muslim businessmen in Singapore.[179] . Because of this there are very few people who are able to create a full *waqf* such as the ones that had been created by the earlier philanthropists. There is, therefore, a dire need to expand the *waqf* base without resorting to the old method of waiting for a rich person to donate or bequeath their property as a *waqf*. 84% of the Singapore population lives in Housing Development Board (HDB) flats[180]. Majority of the Singapore Muslims belong to the middle and lower income group, most of them live in a HDB flat. A HDB flat is of a 99-year lease and to *waqf* the property is not possible as under the HDB policy the flat cannot have an organisation or company as its owner. It has restricted and limited ownership. For example, even a foreigner cannot own a HDB flat. Hence, if a person *waqf* a HDB flat it has to be converted to cash and the cash can then be pooled either to buy a *waqf* property or create a *waqf* fund. Therefore, Muis needs to look at aggressive creation of wills to expand its *waqf* base and assets in the future.

Small attempts have been made by Muis to promote *awqaf* through the dissemination of brochures, conferences and riding on a publicity campaign for its

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[178] Based on the income contribution from the MBMF fund through the CPFB statistics. Statistical figure derived from data for the year Oct 2007.

[179] It is difficult to get a database based on ethnic or religious based for Muslims companies. This is only based on interview with the officer from the Singapore Malay Chamber of Commerce and Industry. According to their 2008 annual report less than 100 Malay companies are registered as members.

[180] Based on 2003 HDB Singapore Household survey. Accessed via http://www.hdb.gov.sg/__4825703800337EDD.nsf/0/DA75E3EC5C5D86804825705A00200B3E?OpenSource on 19 Sep 2008.

other products such as *zakat*, *dana madrasah* and public education on *faraid*. However, no strategic mapping of the promotional and educational campaign for *waqf* has been established.[181] While this would be a Muis initiative, its corporate arm, Warees could do more to help initiate the marketing of *waqf* among the public.

Further initiatives must be looked into to expand the base of *waqf* assets into the proposed areas recommended:

1) Encouraging the creation of will for many Muslim Singaporeans to will part of their assets as *waqf*[182]. (limited to a maximum of 1/3 rule for *waqf*)
2) Create a cash *waqf* fund through fund management such as *waqf* shares or even property trust such as I- REITS for Muslim to participate in the creation of *waqf*
3) Marketing the *waqf* overseas to reach out to global philanthropists to create *waqf* in Singapore and repatriate the income overseas and/or in Singapore.
4) Expanding the existing *waqf* assets through *istibdal* and developing their properties (this has been aggressively done)

The above lists are just some of the initiatives that could be done to accelerate the growth of *waqf* funds in order to meet the increasing demands of the community. The Muslim population has also one of the high growth rates in Singapore, which is 1.9 % for the Malays as compared to only about 1% for the Chinese.[183] Huntington predicted that there will be more Muslims in the world in future hence a higher demand for Muslims products and services (1997) . These demands can be met by the institution of *waqf*.

4.11 Conclusion

Although *waqf* funds have existed since the establishment of Muis in 1968, only of late, in the 1990s, has Muis embarked on aggressive development programmes for the *waqf*. As can be seen in Chapter 3 and in this chapter, evidence of exponential *waqf* income has been created. The key to the success is innovation coupled with administrative and management efficiency. Comparing the

[181] Based on Muis 3-year strategic plan mapping for the community, internal documents.
[182] Injunctions to create will in Al-Quran (Al-Baqarah:180). The 1/3 rule is provided in Sec 60(1) of the AMLA, where it states that a person cannot will more than one 1/3 of his or her assets. This provision is necessary so as not to circumvent the *Faraid*(inheritance) law obligated upon the Muslims.
[183] See Singapore stats via http://www.singstat.gov.sg/stats/themes/people. Accessed on 19 Sep 2008.

achievements of *awqaf* in Singapore with many other neighbouring or Muslim countries with better infrastructures and more funds, the Singapore *waqf* has made new inroads and been able to manage its *awqaf* well.

The strong accountability and transparency culture of Singapore has made it possible for all *waqf* assets to be properly audited. Many Muslims countries find this a daunting and humongous task to undertake. For example, a research student in Iran, needs to do his or her own survey in the particular area to determine the area that the *waqf* occupies. In Malaysia, the Jabatan Zakat Wakaf dan Haji have still not complete their survey of *waqf* lands in Malaysia, let alone compiling the assets worth and consolidation of *waqf* accounts.

Waqf in Singapore not only contribute to the community's social and religious needs, but also to such needs in the country of their *waqifs* origins or their forefathers overseas. Take for example the earlier *wakif* who came as a diaspora group of Muslims to Singapore and created beneficiaries in their country of origin. The Muis records show about 10% of the income is repatriated to overseas countries. Through this inadvertent act of globalisation, higher income can be generated by diversification of *waqf* overseas. This is evidence in many of the *awqaf* which are managed in Singapore, of which one particular example is the *Waqf* of Kader Dawood and Meydin. The properties of the said *waqf* are located in Joo Chiat, a historical Malay *kampong*[184] area. The beneficiaries are entirely for three mosques in India. The *waqf* has generated substantial income in comparison to the costs needed in India for the maintenance of the mosque where the income generated can actually maintain a whole township by Indian standards if the value of the currency and the cost of living are translated in the village town in India where these *masjids* reside. It is therefore wise to set up *waqf* where the assets can give higher relative value to the beneficiaries and this will not be limited by the origin of the country they live in. As we are in the age of globalisation such matching of yield and return is important to create the necessary income.

In view of this, there are many areas where Muis can improve and bring the management and administration of its *waqf* assets to a higher level. Of particular importance is to look at the existing structures to see whether there are changes

[184] *Kampong* is a Malay word to describe a village - Joo Chiat is near the Geylang area which historically has had many Malay dwellers. The area has now been designated as a Malay ethnic area.

needed and, if there are consider how to proceed, either by forming a trustee-managed company or a foundation.

Next, is there a need to amend the existing Act? Since *waqf* is an *ijtihadi* law to create too much control and definition in the Act will only restrict the expansion and improvement of the *waqf* as a whole.

Muis also needs to expand its *waqf* assets beyond the traditional property class. A more innovative structuring of *waqf* assets, such as creating companies and pooling cash funds to create I- Reits for example, could be a viable and interesting option. Muis needs to expand its *waqf* base and seek ways to improve yields on its assets. In the next chapter, the practicality and the success for this new product shall be analysed and conclusions will be drawn from this new initiatives.

Chapter 5: Research Methodology

5.1 Introduction

Every researcher has their own unique way of finding, probing the answers or solutions to their problems. It is, therefore important that the manner data are identified, produced and analysed will give the research the stringent and scientific process and rigour it needs to ensure data reliability.

This chapter discusses, and explains the way the research is designed, conducted and strategised. Subsequently, all this needs to be linked back to the research questions so that it is able to provide the necessary information to give the whole research its content. There are advantages and disadvantages in any of the method used. However it should be noted that the method that will be adopted should be the one that will best suit the particular research.

There are several methods that shall be discussed in this chapter. Since *waqf* is a specialised niche area so it will not be very useful to ask certain legal and technical question to a layman in assembling primary data. Hence, methods like the use of mass survey on the public are not considered usable if the research does not attempt to seek a mass opinion on a certain matter. In a research survey done by Shaik Abu Bakar (2004: 137) showed that the information on *waqf* is at a very low level of understanding. According to the survey, 90% of the respondents do not know what a *waqf* is or how to create one. However, semi-structured interviews were adopted to attain some of the expert's opinion in the particular field to answer the questions. Nonetheless, there are many secondary and primary data such as documents, letters, archives and surveys conducted and prepared by the Islamic Religious Council of Singapore that can be used to strengthen the data and findings further. Primary data is assembled through semi-structured interviews, and the secondary data used are in the form of analysing the annual reports, the statements of account of each property, internal documents, title deeds, wills and other archive documents.

5.2 Research design and strategy

The research design adopted for this research includes the case study approach. This "entails a detailed analysis of a single case" (Bryman & Bell, 2007:

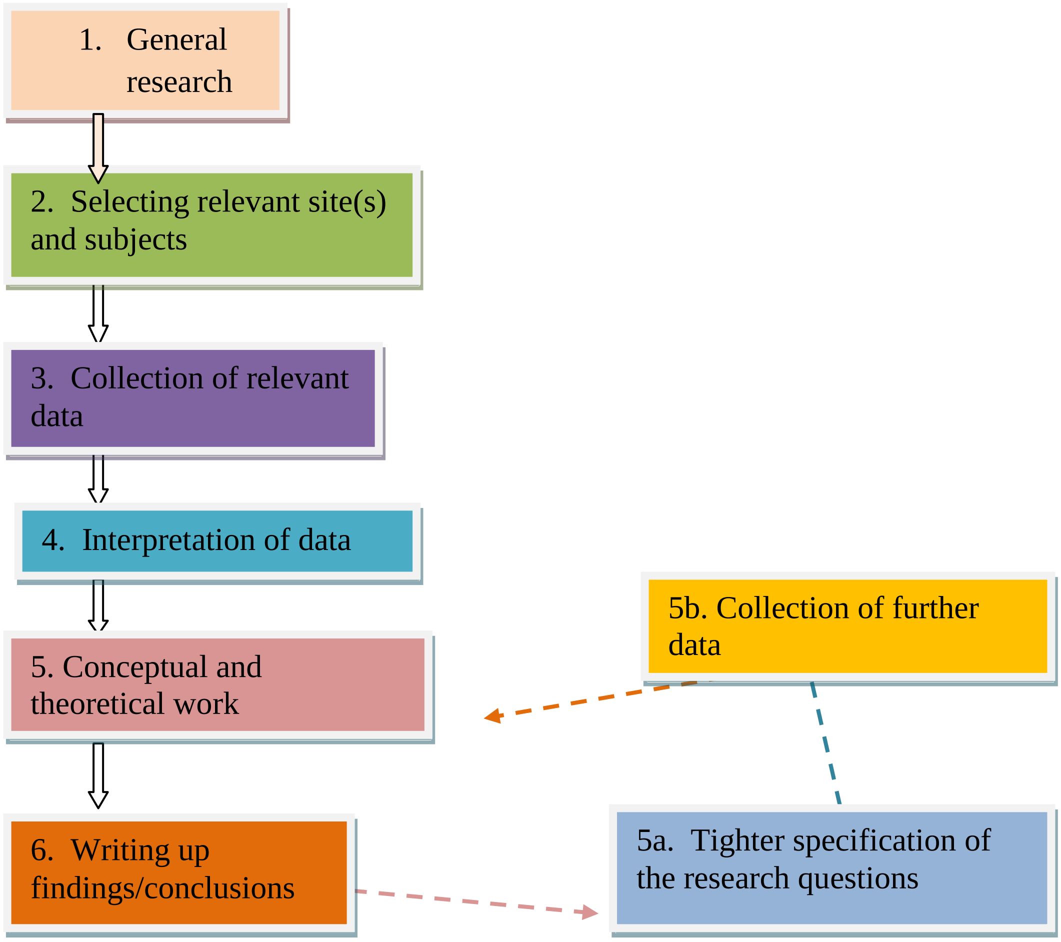
62). According to Stake (Stake, 1995) as cited by Bryman and Bell (Bryman & Bell, 2007), case study concerns the complexity and the nature of the case concerned. In this research, the case study will be *waqf* in Singapore and the single organisation that administers the entire *waqf* in Singapore which is the Islamic Religious Council of Singapore. Within the framework of this Council, several *awqaf* will be selected as samples. Multiple studies on each of the number of *awqaf* will be conducted. Bryman and Bell (2007) reported from Yin (2003) that there are several types of case study. A revelatory case study is used to explore the unique nature of the case in question. For example, in deducing whether a REITs approach to structuring the *waqf* assets is feasible is examined using the revelatory approach (Yin, 1988), where no scientific investigation has been done on a *waqf* property before.

However other *waqf* cases can be classified as a representative or typical case where most *awqaf* assets will go through the same kind of treatment unless the factors or criteria have changed.

In terms of the research's strategy, an inductive and exploratory approach to the case study is applied, as the study aims to explore the aspects of waqf financing and structuring through the field research in a grounded research manner.

In terms of the design of the research, the main steps of this qualitative research can be summarised in Chart 5.1, as proposed by Bryman *et.al* (2007: 406).

Chart 5.1 : Main steps in qualitative research



Source: (Bryman & Bell, 2007: 406)

In this research, the following process as proposed by Bryman was adopted. The interview questions are crafted based on the general research questions. A theme is developed and the Islamic Religious Council's management of *waqf* was selected as the case study. Based on the research questions and the subject which has been categorised in a thematic manner, the relevant data are gathered. There are two types of data gathered. One is the secondary data obtained through the literature review and the other is from the documents of the relevant *waqf* case studies in Muis. To substantiate the findings further, primary data through semi-structured interviews were adopted. In this case selective sampling is used to identify the relevant persons for the interview.

5.3 Research methods

The research methods to be applied in any research are of paramount importance. Those used must be appropriate for answering the questions that have been crafted earlier in the thesis. The research method used for this case will be the semi-structured interview.

There are several options to consider on the kind of research methods choosen (Silverman, 2000: 89). Tabled out by Silverman, below are the different uses of four methods.

Table 5.1: Kinds of research methods

Method	**Quantitative research**	**Qualitative research**
Observation	Preliminary work, e.g prior to framing questionnaire	Fundamental to understanding another culture
Textual analysis	Content analysis, i.e. counting in terms of researchers categories	Understanding participants' categories
Interviews	'Survey research' : mainly fixed-choice questions to random samples	'Open-ended' questions to small samples
Transcripts	Used infrequently to check the accuracy of interview records	Used to understand how participants organise their talk

Source: Silverman, 1993:9

The rationale of using a particular research method is derived from the aim of the study. Why use a semi-structured interview and not a normal survey? In the case study of *waqf* administered by the Islamic Religious Council of Singapore, an interview is more appropriate. As quoted by Silverman "the primary issue is to generate data which give an authentic insight into people's experiences" (Silverman, 2004: 100). In this case, the semi-structured interview is suitable to answer the specialised area on which the research is designed. The open-ended questions to small samples fit an interview method. The chosen method, however, allows people to give an unrestricted opinion and view on the questions being asked.

As regards the sampling for this study, the people who have been selected for the interview are people who have in depth insight on the problems and issues. As Charmaz, quoted by Silverman mentioned; "We start with the experiencing person and try to share his or her subjective view. Our task is objective in the sense that we try to describe it with depth and detail. In doing so, we try to represent the person's view fairly and to portray it as consistent with his or her meanings" (2004: 100).

Therefore, choosing the interview method will help in answering the research questions for this particular research.

A triangulation approach to the research process has been adopted. Triangulation is the method of using one or more approaches in the research method process in order to gather the required information (Denzin & Lincoln, 1994). In this case, the first method is the semi-structured interview for collecting primary data; and, for secondary data, primary documents such as survey findings, letters, minutes of meeting, fatwa and legal documents, trust deeds, indentures, wills and many other related documents to strengthen the findings and support the information have been used. The information can be accessible as the advantage of the researcher, being a senior officer in the selected case study organisation allows retrieval of information where outside researcher may not have the knowledge or the ability to pursue access to the documents required. Having years of experience in handling *waqf* matters, the documents to search for and what to look out for is an added advantage to the researcher. The disadvantage, however, is that familiarity with the organisation renders the researcher to take this for granted and possibly may subscribe to the organisational norms and behaviour. However, to tackle this disadvantage, a semi-structured interview was therefore conducted to get an unbiased view on the issues in hand.

5.4 Sampling of the semi-structured interviews

A total of 25 people were interviewed in a structured interview for the same set of answers. In other words, an elite interview method was utilised to understand the issues with the people who have the in-depth knowledge. Due to the complexity and the remoteness of the subject matter, not all officers in the organisation were interviewed as those who are not involved in the day-to-day operation of *waqf* matters would not be able to give the answers needed to some of these questions. Therefore, selected sampling is therefore necessary.

However to give a broader perspective on the issues in hand, for example, in the broad area of investments a comparison with trust investment and investment from *waqf* in other countries was adopted. In this regards, the expert views of investment officers from a trust company, from property companies, to in-house expertise of *waqf* investments has also been included.

Very senior officials from Muis were interviewed, specifically to enquire on policy, administration and management issues. It was imperative nevertheless, that the interviewees had some knowledge in certain aspect of *waqf*.

In Chapter 4, the structural organisation of *waqf* is elaborated. Besides Muis, there are the private trustees, BMT and Warees investments, involved in the management and development of *waqf*. Officers from these organisations were also interviewed in gathering the primary data.

5.5 Sampling strategy

The sampling techniques used for this research is non-probability or judgemental sampling. According to Saunders *et al*. (2007: 230), non-probability sampling is more frequently used for a case study strategy.

In non-probability sampling a purposive sampling technique is adopted. Purposive or judgemental sampling enables the use of our judgement to select cases that will be best used to answer the research questions (Saunders, Lewis, & Thornbill, 2007: 230). It is frequently used for working with very small samples such as in the case-study method (Saunders et al., 2007: 230). Hence, purposeful sampling strategy was used in this research because the researcher selected the site and the individuals for study as they could "purposefully inform an understanding of the research problem and central phenomenon in the study" (Creswell, 2007: 125).

Therefore, for this research the purposive sampling technique was used as the subject matter on *waqf* is a very unique and highly specialised topic, and the people who can address the research questions are highly specialised people, an elite group who is able to give an in-depth opinion on the subject matter (Denzin & Lincoln, 1994: 202). Silverman said that "many qualitative researchers employ......purposive, and not random sampling methods. They seek out groups, settings and individuals where.... the processes being studied are most likely to occur" (2000: 104)

5.5.1 Sample size and group

In view of the specialised nature of the interviews the sample was selected based on their area of specialisation and their added knowledge or experience of *waqf* matters. Therefore, the sampling is grouped into the following categories:

(i) Administrator

(ii) Lawyers

(iii) *Shari'ah* scholars

(iv) Investment and finance specialists

The above groupings of personnel in the selected area are basically done according to the research question cluster that is needed to be addressed later.
The institution or companies that were interviewed are depicted in Table 5.2:

Table 5.2 : Classification of interviewees

S/no.	Name or category of institution/companies	Interviewee designation	Remarks	Types of firm
1.	Legal	Partners	Legal issues	Law firm-specialised in *waqf*, inheritance and Muis internal law firm.
2	Legal	Partners	Legal issues	Law firm-occasionally dealt wih *waqf* matters
3	British Malayan Trust (BMT)	CEO & Finance Director	Development, legal and admin issues	Public listed Trust Company
4	Warees Investments Pte Ltd	CEO/ Chairman of Board and officers	Development, legal and admin issues	Property , Maintenance company and wholly owned subsidiary of Muis
5	Majlis Ugama Islam Singapura	Senior Management, Directorate, officers , Muis council Fatwa members	All issues	Authority in the management and administration of *waqf* in Singapore.
6	Private Trustees	Private Trustees	All issues	Includes one of the largest privately managed *awqaf* in Singapore.
7	Government linked Trust companies	Lawyer		
8	Government linked Trust companies	Investment manager	Investment for Trust accs	
9	Property and Islamic Investment outfit	Senior officer		

Based on the listing in Table 5.2, a total of 25 people have been identified to be interviewed. Although the absolute number of the interviewees is rather small, the percentage of the sampling to the population size is rather large. This is due to the limited and specialised group of people who are involved with *waqf*. It will not be very useful questioning a person who is not familiar with the subject matter being asked. This selection will result in the reliability of the sampling done. Based on Table 5.3, it can be deduced that a very high sampling percentage was selected to answer these research questions. The years of experience of the interviewees are included in Table 5.3. Company and personnel anonymity was observed to honour any request for anonymity and confidentiality. As described in the social research guidelines, all measures must be taken to protect the confidentiality of the subject matter, and it is the researcher's duty that confidentiality requested must not be breached (SRA, Dec 2003).[185]

Table 5.3: Percentage of sample against the population size and no. of years of experience of interviewees

Grouping	Sample Size	Population	% of sample size	Years of experience
Administrators	10	11	90.9%	131
Lawyers	4	6	67%[186]	82
Shari'ah scholars	4	12	33%	78
Investment and finance experts	4	8	50%	54
Total	25	37	68%	345

5.5.2 Population size

The population size is derived based on the following estimations:

i) For the administrators' grouping, the population size of 11 is based entirely on personnel in the Islamic Religious Council who have, one way or another, dealings with *waqf* matters. Since the case study is based on the Islamic Religious Council of Singapore *waqf*, these key personnel were interviewed on

[185] See Section 4 of the Social Research Association guidelines on maintaining privacy of the subject matter.
[186] Although the population is based on the number of firms, including one which makes 90% of the *waqf* transactions in S'pore this has definitely increased the sample size tremendously.

specialised area in their portfolio. These are derived from the job specifications of Majlis Ugama Islam Singapura.

ii) There are basically, 4 firms which have dealings on *waqf* matters. However, one of them handles almost 90% of the *waqf* matters in Singapore.[187] Therefore, by putting the firm in the sample, the sample size shows a significantly high percentage of incidences from the population. Included in this sample size is also a professor who is familiar with *waqf* law. The opinion of an academician will give balance to some of the questions on both the legal and *shari'ah* issues on *waqf*.

iii) The population size for the *shari'ah* scholars grouping is based on the *fatwa* members' population. There are altogether 12 *fatwa* members in Singapore. They represent the religious elite in Singapore. Out of these members, 4 were selected based on their senior position in the fatwa committee and their encounters and experiences with *waqf* matters. The chairman of the fatwa committee and also the Mufti were included in the interviews. The views of these *shari'ah* scholars are important as they carry a lot of weight in this particular area of decision-making. The four members represent a good weight on the rest of the population size.

iv) As regards to the investment and finance experts, their selection is not so straight forward. To be able to select the sample, a selection of investment and finance experts both in the field of *waqf* and the instruments were consulted. Due to the very small number of people found to be familiar with this area, the views of the investment managers from the trust company were also sought. This allowed for a comparison on the manner *waqf* and trust investments are strategised. The in-house investment and finance officers who deal with the investment of *waqf* assets were also being interviewed. 100% of the officers from this area are sampled. Only one expert who has handled investments of REITs was interviewed based on the very specialised nature of *waqf* and REITs instrument. The population size of eight is based on the number of personnel who have, one way or another, been involved with *waqf* investment. It has to be noted that the population size is not based on company.

5.5.3 Advantages of the sampling method

[187] Based on interview with Muis *waqf* officer.

The advantages of using this sampling method are that *waqf* is a much specialised study, not many people have the knowledge let alone a basic understanding of *waqf*. As a result, the selected professionals and officers with the required knowledge in this specialised area were selected due to their experiences of *waqf* operations, services and direct dealing on *waqf* matters.

5.6 Interview process

The one- to-one interview and transcribing of the interview were done solely by the researcher herself. This was to ensure accuracy and the interviews were conducted accordingly and inferences from the interview were correctly analysed. For a successful interview after careful selection of the sample, the interviewer is the most important person to ensure maximum, relevant and accurate information.

The researcher has vast experience in the subject matter as she has direct involvement with *waqf* matters. In order to understand an interviewee, the interviewer has to have subject knowledge of the matters to appreciate the problems at hand and to be able to understand what the person has to say. Silverman (2004: 105) quoted Collins as saying that "in order to make legitimate knowledge claims, researchers should have lived and or experienced their material in some fashion".

The following section will look at the research process undertaken for qualitative research.

5.7 Qualitative research process

Once the interview transcripts and all data has been recorded and collated, step 4 in Chart 5.1 is done to interpret the data obtained. From the data, step 5 will show the conceptual and theoretical framework taking place. As the data is being examined, there may be gaps in the data that need to be filled up. This is where step 5b in Chart 5.1 will come in where further data is needed. Further, where there appears to be ambiguity in the data collected, a follow-up email or telephone conversation is done to interpret the interview correctly. On the other hand, where the data concerned is inadequate a further data collection through the various secondary documents is obtained. Through this process the research questions can be further tightened to support the research findings and to obtain the symmetrical correlation with the research questions.

Finally, the last step in the research process is to write up the findings and analysis and draw up the recommendations and conclusions.

5.7.1 Interview preparation

Prior preparations for an interview were done through emails and the telephone to make the necessary appointment. In most cases the interview was conducted at the interviewee's office at his or her most convenient time. Telephone interviews or interviews by email were avoided if possible as it was considered as more time-consuming for the interviewee and may lack the personal contact for an effective communication (Bryman & Bell, 2007; Creswell, 2007: 133; Saunders et al., 2007). However, where availability of the person concerned is not possible, telephone and email can be used in order not to miss out on the person who will be instrumental in giving the input required. Clarification can also be sought through phone and email to check on the correct meaning of the answers given. Each interviewee was allocated about an hour for the interview. Many of the people interviewed are very senior people in the organisation. Thus, careful selection of date and time is important so as to avoid unnecessary interruption during the interview. In one day, a maximum of two persons were allocated for the interview, usually one in the morning and one in the evening.

5.7.2 Transcribing the interview

For the individual interview a tape recorder and a digital audio recording device were used to ensure a verbatim record. These recordings aided in the accuracy of the transcriptions later. Errors can creep into recording and transcribing, (Bryman & Bell, 2007: 492) if an assistants is used the errors are higher since the assistant may not know the actual conversation done and may pick up the wrong words. In view of this, all work was completed by the interviewer. Key words and points were written down as the interviewees were interviewed. This ensures that key points and important factors were sieved from the noise later.

Although some interviewees were not comfortable with a recorder being used during the interview, all effort must be attempted to use an audio recorder as mentioned by Silverman (Silverman, 2000: 149). We cannot simply rely on our memory to recall all the conversations that took place (Silverman, 2000: 149). However, two of the interviewees did not want the interview to be tape recorded, hence it is important to honour their request for strict confidentiality and anonymity (SRA, Dec 2003).

5.7.3 The preparation of the interview questions

Careful selection of high quality question is instrumental to the success of the whole research. Wrong, irrelevant or weak questions posed will give undesired answers and can lead to inaccurate conclusions. Hence the selection of questions is very important for the success of the whole research.

The interview questions were created, therefore, based on a thematic approach. This thematic approach relates to the research questions and objectives of the whole research. An open-ended semi-structured interview based on the following broad thematic approach was used;

(i) General administration and management issues in *waqf*
(ii) *Shari'ah* and legal issues in the management of *waqf*
(iii) Investment, financing and development issues in *waqf*

Based on this approach, the questions were asked on the literature review, the secondary data collected, and on the case study of various *waqf* where information was also gathered through secondary information. The following section lists the interview questions.

(i) *General administration and management issues in waqf*

Here, the interview questions seek to identify gaps inherent in the current administration and management of *waqf* assets and how this can be addressed. Not all questions that have been crafted were targeted at the same group of people. For example, certain questions, such as policy matters were targeted at top management level. Details on more operational questions were targeted at say the finance officers or administrative officers dealing with the subject matter. This selective interview method ensures that the right person answers the appropriate questions. This also ensures that time is not wasted on questions that are irrelevant to the targeted interviewee. Below is the list of questions.

1	**What are the factors that contribute to the successful management, administration and development of *waqf* assets?**

2	What do you think are the biggest challenges in the development and management of *waqf* assets?

a) Corporate governance issues

Here the interview questions sought to identify any weaknesses or gap in corporate governance in *waqf* as this would have implications on the effectiveness of the *waqf* administration as a whole. Hence the targeted interviewee for this question was mostly the policy-makers who are managers and the lawyers.

1	The AMLA has limited jurisdiction on *waqf*. Is management expecting to strengthen the rules and regulation governing *waqf*? If yes, in which particular aspect of *waqf*?
2	Muis regulates and manages some of the *waqf*. Will there be a conflict of interest in decision-making as Muis also manages other funds in its portfolio?

(ii) *Shari'ah* and legal Issues

In this category the interview questions attempted to understand the legal framework for managing *waqf* and some of the contemporary issues in relation to the *fiqh* of *waqf*. For the questions here, the *shari'ah* scholars such as the *mufti*[188], the *fatwa* members and other religious scholars, secretary and the lawyers were interviewed to get their in-depth opinions of the issues at hand. The questions were to identify the many concerns on the various opinions on *waqf* and how *shari'ah* opinions are being applied in the case of *waqf* in Singapore.

1	*Waqf* is based on '*ijtihadi*' laws. Do you see the need to have separate *shari'ah*h rulings for waqf to be incorporated in the AMLA?
2	What are the issues in *istibdal* and in what circumstances can *istibdal* be used?
3	Are *awqaf* allowed to enter into a long lease such as a 99- year lease?
4	Are *awqaf* allowed to borrow?

[188] *Mufti* is the religious head in the organisation.

5	Must *waqf* investment, financing and development be dealt in a *shari'ah* compliant manner?
6	Should *awqaf* have a permanency features?
7	What is your opinion on non-Muslims creating *waqf*?

(iii) Investments, financing and development issues on waqf

Here the interview questions attempted to discover whether there are any investment objectives and guideline for *waqf* assets and how these can ensure sustainability of the *waqf* and its beneficiaries. Based on the literature review and case study of secondary data revealed in Chapter four, many *awqaf* also face sustainability issues. Hence it is important to understand how the investment strategies are shaped and whether they will in fact contribute to the return the *waqf* can accomplished based on the particular investment strategy adopted. In this grouping the following challenges faced in the development of *waqf* assets were posed.

1	Is there any investment committee established for the purpose of *waqf*?
2	What is or should be the investment objectives for *waqf*?
3	What is your opinion of the risk-return profile of *waqf* assets? Should capital preservation prevail over return on capital employed?
4	What should be the ideal asset allocation strategies for *waqf*?

(a) Issues of using contemporary instruments for waqf financing

In this category, the interview questions attempted to seek the reason for a limited compliance structure in the development of *waqf* assets. They looked at how the structuring of these assets might lead to the advantage or disadvantage of *waqf* assets. Questions on the possibility of the REITs structure were developed and selected interviewees will be asked the broad questions on the feasibility of *waqf* to be structured as a REITs vehicle. Although it is only a feasibility study on the possibility of REITs as another *shari'ah* compliant product, the research does not attempt to conduct a thorough study on this vehicle. There would have been limited knowledge on this specialised area, therefore only very few interviewees will be able to answer these questions. The idea was to discover any reservations from the interviewees of using this contemporary instrument. There were no interview questions relating to the financing structures which have been undertaken by Muis which were discussed in Chapters 3 and 4. Instead a case study approach has been applied to analyse these structures and where there are problems to highlight them, so that improvements can be made for future structures. The interview questions are as follows;

1	What are the problems or issues for waqf to venture into a REITs structure?
2	What are the advantages in creating REITs for *waqf* properties?

5.7.4 Analysing the data

Since the qualitative method used in this research is based on a case study approach and using interviews as the tools for research, interview and secondary data analysis will be used. All the tools in this chapter, from the choice of research method, to the sample size and the research design are interrelated to help in answering the research questions in a scientific manner. Rigorous research steps have been used so as to obtain as full an analysis as possible of the problems at hand and offer a suitable solution. The following section will explain the method used in analysing the interview transcriptions.

5.7.4.1 Content analysis

A content analysis approach has been adopted in analysing the interview transcriptions. There are several definitions of content-analysis, one of which is quoted by Bryman in Berelson. He says “it is a research technique for the objective, systematic and quantitative description of the manifest content of communication” (2007: 302). From the semi-structured interview a content analysis method with the objective of textual analysis regarding the contents of the interviews will be adopted to arrange the findings and analyse the data in a systematic (codified) and objective manner thus making it simple to provide answers to the questions that have been asked. As Robson mentioned, ‘content analysis is a codified common sense’ (2002: 358).

As regards to the advantages of content analysis, Robson maintained (2002: 358):

- It is a very transparent research method;
- It is an unobtrusive method (if used to analyse documents);
- It is a highly flexible method; it can be applied over a wide range of unstructured information in this case a semi-structured interview fits well with this concept.

Druckman and Robson said of the disadvantages of the content analysis: (2005; 2002: 259):

- The documents available may be limited or partial;
- Codes miss nuances and innuendos;
- The documents may have been written for some purpose other than for the research, and it is difficult or impossible to allow for the biases or distortions that this introduces. Furthermore, there may be limited access and denial of permission to obtain the documents needed to see the problem in a larger context (a need for triangulation with other accounts/ data sources to address this problem)

Content analysis is useful because it is concerned with *data reduction* (Robson, 2002: 358). For example, the interview being done, there are many factors that have been said but, in order to codify the interview, other things which were said but which do not fall into the category created can be ignored. Therefore, a very important issue to be noted is the validity of what has been said from the coding categorisation as this can create a trade-off between coding accuracy (reliability) and the meaning of coding categories (validity) (Druckman, 2005). This issue can be reduced by the fact that the researcher's own experiences during the interviews and the background understanding of the interviewees were able to give the added knowledge as to why such thinking and approaches were said by the person given his knowledge, his specialised background and his/her current position. All these will shape their thinking and views of a particular subject. However, this will be analysed and the researcher will give an objective analysis of all the answers and conclude with appropriate recommendations using all the resources that have been gathered for this research.

The computer-aided method to content analysis, such as using N-vivo, has not been adopted due to the fact that the interviews were manageable to be done via manual extraction of the interview. While this method is very time-consuming, the specialised nature of the questions required the interviewer to replay the interview being recorded in order to pick up important factors which might not make any sense using N-Vivo or other computer-aided system. There were words iterated in Malay by some of the respondents, which needed translation. The *shari'ah* scholars answered in Arabic, so the meaning of their words must be understood fully using the whole context. Hence it is not very useful to use a computer-aided programme for this type of content analysis.

5.7.5 Transcribing and codifying the data for content analysis: primary data analysis

Transcription of the data was done by careful listening to the recorded version before entering all the information in the computer. The data is then analysed according to theme.

According to Stakes (1995), there are four forms of data analysis and interpretation in a case study research. First from the pile of data, the researcher can seek instances and pick out issues and relevant meanings. Second, in direct interpretation, the researcher can look at single instances and seek meaning without having to look for so many instances as in the first case. Third the research can look for patterns in two or more cases and try to tabulate a table for cross-case analysis. Lastly the researcher can develop naturalistic generalisations from the data.

The answers from the interview can then be coded and a theme created on the questions being asked. This focus coding method is very useful and the researcher can distinguish the forest from the trees (Robson, 2002). Focus coding then can be done in the following manner using one of the samples from the findings below. The questions are grouped into a focus coding structure. The focus coding is grouped into certain key areas that have been raised by the interviewer. From the coding, we are able to create a theme which gives an overall summary of the various respondents. By doing this we have made the answers more easily understood. Thus, the subsequent step, will be the thematic analysis (Franzosi, 2004: 550). What this entails is grouping the various interviewees responses so that a clearer picture of what each has said can be analysed further. For example, in question 1 below, the factors that contribute to the successful management of *waqf* assets are innovation and creativity. So what did the respondents say about innovation and creativity in *waqf*? They mentioned several factors such as performing assets migration exercises, *istibdal*, and issuing *sukuk* to expand the development and so on. At this point, the theme can be further brokendown to understand the details of the particular innovation suggested by the respondents.

Subsequently, the respondents' answers or comments were further elaborated using the secondary data to substantiate the findings. Secondary data from the organisation documents is very important as these are genuine records which are much more accurate than just merely relying on the respondents' opinions. There may be conflicting findings. This is common as the subject matter and the experiences of the respondents can shape the manner of their answers and comments on the particular subject matter being projected.

Below is a sample of the interview questions and the focus coding done. At the end of the coding a theme will be created to capture the important facts in the answer.

Table 5.6: Question and thematic answers to interview question 1 on administration and management of *waqf*

Question 1	What are the factors that contribute to the successful management of *waqf* assets
Focused Coding	
1	Innovation and creativity in *waqf* management and development
2	Human capital • Highly committed • Passionate • Talented • Strong leadership • Greater tolerance of risk. • Highly knowledgeable
3	Legal and governance issues • Good governance • good legal framework • efficient infrastructure
4	Progressive fatwa and *shari'ah* interpretation
5	Easy access to finance
Theme	Factors that contribute to the successful management of *waqf* assets must have the elements of innovation and creativity, highly talented, passionate people with strong leadership and with great vision and attitude towards risk. In addition good legal framework with progressive fatwa and easy access to finance.

After identifying the theme from the question, as in Table 5.2, the coded elements are individually coded with the given answers.

Table 5.6.1 Focused coding Number 1 for Question 1 (administration and management issues)

Creativity and innovation is an important aspect in enhancing *waqf* assets	
Interview 1	*Istibdal* or asset migration exercise as an innovative tool for *waqf* development. Use proper planning and strategy for each asset to meet its full potential
Interview 2	The creative use of the long lease such as 99-year lease or even 199-year leases. Creation of new *awqaf* through the cash *waqf* concept. Create a compelling reason for creating a *waqf* through strong and clear objectives for it such as *waqf* for religious knowledge purpose.

5.7.6 The fieldwork

A total of 25 interviews were conducted. Prior preparation to obtain all the necessary appointments was done. The interviews were conducted on a one-to-one basis. However, several interviews need to be followed up by email as some responses were not clear. There was one lawyer who had insufficient time to answer to the questions and because of this she had to respond through an email instead.

The interviews were done over a one-month span of time due to the early preparation in getting the appointments. Most of the interviews were done in the office of the respective interviewee with one exception, which was done in the interviewee's home. The reason for doing one-to-one interviews was to allow the interviewer to have an independent view about the matter as against interviews based on a group where other persons in the group can influence the thoughts of the others.

Most of the interviews were conducted within Muis. While the questions were crafted to assist the findings on a particular issue, the answers were sometimes answered before the questions were posed, and with many interviews, the interviewer's knowledge on the subject matter played an important part in putting across clear and focussed questions to the interviewees. The most difficult part was the theme on investment and financing. Since this is a specialised area, the interviewee can only relate to existing tools and may not relate to *waqf*. This is where the researcher has to match the nature of the conventional tools with the needs of the *waqf* assets, the conditions stipulated and innovatory methods of creating the financial tools for investment.

For an efficient outcome, it is important that the interviewer has the necessary skills and knowledge of the subject matter. Since the interviewer is familiar in the organisation, her knowledge of each of the respondents, their prejudices, inclinations, and views on the subject matter, can be analysed in more accurately. The most important factors contributing to a successful interview are trust and rapport as quoted by Hayser in Moyser and Wagstaffe, 1985 (Healey & Rawlinson, 1994: 137). The advantage of having worked in the organisation ensured this trust and rapport could be developed. Some of the interviewees were not from the organisation but had worked with the organisation on matters related to *waqf*.

Face-to-face interviewing is an important method of obtaining information (Healey & Rawlinson, 1994: 140). Therefore the entire interviews were done on this basis. As mentioned earlier in this chapter, emails and telephone were used only to ask or explain certain ambiguous answers or to seek further explanation.

5.7.7 Data analysis for the secondary data

In gathering secondary data, the quality of the document is of paramount importance. According to Scott, as quoted by Bryman, in order to ensure the quality of the documents the following criteria must be present 1) the authenticity of the document; 2) credibility; 3) representativeness; and 4) have meaning i.e it is understandable and comprehensible (Bryman & Bell, 2007: 555). In the case of *waqf*, the following relevant documents will help to serve the research undertaken:

1) *Waqf* deed
2) Annual reports
3) Affidavit
4) Legal documents
5) Title deeds
6) Organisation policies, regulations on *waqf*
7) Fatwas, legal rulings and statutory enactments.
8) Other relevant documents, reports and newspapers.

There are 99 *waqf* deeds and hundreds of title deeds in Muis. However not all documents can always be perused. Only relevant and selected *waqf* cases should be selected in a study.

Document analysis conducted through text-related content analysis by locating the useful information concerning the study in question.

5.8 Reliability of data

The importance of reliability rests on the assurance that the data are obtained independently of the measuring event, instrument or person. Reliable data, by definition, are data that remain constant throughout variations in the measuring process.[189]

Testing reliability and validity may not necessarily come hand-in-hand. Data may be reliable but not valid (Krippendorff, 1980, 2004). As defined by Krippendorf, validity on the other hand means the research is accepted as consisting of undisputable facts or, in other words having 'empirical truth'(Krippendorff, 1980: 155).

For data which claim to be reliable, these three criteria should be present:

1) Stability
2) Reproducibility
3) Accuracy

In terms of stability, for the content analysis used, the data had to be stable in the sense that if a person was interviewed twice for the same kind of question, the same kind of answers should be given. The important matter in this case is that the stability factor has been taken into account by ensuring that the right person was interviewed for the knowledge and experience required in this limited area of *waqf*. The data is also reproducible as the questions are crafted in general broad-based terms. Such questions can also be replicated for use in other countries to find out their systems of *waqf* management. However, the results may not be the same as the case study is designed for *awqaf* in Singapore where the legal, *shari'ah* and organisational environment will not be similar. However, the questions asked in this case study were not prepared to suit the person but the case study.

Accuracy is the strongest reliability test. To test for accuracy you can have different answers from different interviewees. You can then draw conclusions on the accuracy by collating the answers and discovering a pattern. However, although this

[189] Krippendorff mentioned in his book quoting the definition given by Kaplan and Goldsen's that "the importance of reliability rests on the assurance it provides that data are obtained independently of the measuring event, instrument or person. Reliable data, by definition, are data that remain constant throughout variations in the measuring process. (1965:83-84)

may make the data reliable it does not make the data valid, as the person who disagrees with the general opinion may prove to have been right in the first place. In this research, it is clear that the question on whether there should be a separate *waqf* law to be created gave strong opposing answers. However the researcher has argued and was supported by only one interviewee who said that there should be separate *waqf* legal provisions. Nevertheless, this position must be supported by other evidences that will support the argument. This is where reliability may not lead to validity of the data concerned.

One of the important factors on validity is to ensure the validity of the data, process and product.[190] To ensure data validity, one of the important criteria is the sampling. As explained in the earlier section on sampling, a high sampling criterion is obtained in order to make sound research findings. The process of obtaining data is standard through the semi-structured interview and having it recorded and coded to capture the essence of the subject being addressed. This systematic method has helped in the reliability and stability of the method used.

It is also relevant to the response bias issue as the researcher is part of the organisation and this may be considered as a source of bias in the process. However, as this section explains, every attempt was made to overcome any bias in the process by ensuring reliability and the validity of the data. Considering that such organisations are culturally 'closed' institutions in terms of openly discussing and revealing their detailed operational nature, being an outsider would not have helped to gather data as much as this research managed. Thus, despite the potential bias, the magnitude and the quality of the data gathered is facilitated by being an insider to the process has to be acknowledged as valid.

5.9 Conclusion

The research methodology adopted for the semi-structured interviews suit well with the subject being investigated. Since *waqf* is a specialised subject, very few people will be able to give the required responses to the questions posed. Hence, the knowledge needed by the researcher should be sufficient to understand and interpret

[190] See Krippendorf, p.158. He explained the criteria to obtain high quality in content analysis. He said that the two most important criteria are reliability and validity. The reliability issue relates to the 3 factors already mentioned: ie stability, reproducibility and accuracy of the data. Whereas, validity is concerned with the data, product and process. Data validity will need to address the sampling and semantic factor. For product validity, there is a need to look at the co-relational and predictive validity. Lastly for process validity, construct validity needs to be factored in.

the answers. The sample, though small, is restricted by small number of people who are working on *waqf* matters directly and indirectly. A high sample population was adopted for the administration work related to *waqf* in that 100% of the staff working on the issues were interviewed.[191] Of the lawyers, there are only 4 directly involved with *waqf* matters. One lawyer is very proficient in *waqf* and 90% of the *waqf* matters are handled by him.[192] The same goes for the other categories. Some of the answers reflect polar views. Although content analysis needs to be based on a generalisation, exceptional views were also captured as they may prove to be very important. The strength of these semi-structured interviews is that the people who were interviewed are people who have experience and are directly concerned with *waqf* management and administration. The limitation is that, their views are usually shaped by the environment that they are operating in and the official view may not necessarily be their personal view.

Nevertheless, the above factors do not impose major problems because the analysis will not be based on the interview data alone, but will incorporate cases and secondary data to support the analysis.

[191] The number of staff working on *waqf* matters is based on the job description as provided by HR department of Muis. There is one officer in the Zakat and *Waqf* department and the Head who deals directly with *waqf* matters. In the finance department where financing, investment are concerned, there is only one staff and the Director of finance involved. Both have been interviewed making it a 100% sampling. The same goes on the operational function of waqf where Warees Investments, deal with waqf matters. Their staff were also interviewed. In the religious sector there are 12 fatwa members , three of the members have been asked on the *waqf* matters . This is a sampling of 25%. However, not all members are familiar with the *waqf* issues. As a result only fatwa members who deals with *waqf* matters or members who held senior religious position in Muis were interviewed. The chairman of the fatwa members who is the Mufti has also been interviewed. The administrators involved are also people who are in very senior positions. To make the answers even richer, the trust lawyers and professors who have had knowledge of *waqf* were also asked. The academician who has had a couple of journals published on *waqf* has been questioned as well to balance the views from the practitioners and the academicians. For the investment of *waqf* properties, due to the limited officers involved in this activity, the views from experts who have dealt with trust investments, some are fund managers handling *waqf* transactions have also been included.

[192] See pg.123 of this chapter.

Chapter 6:
Administration and Management Issues in Singapore *Waqf* System*:* Empirical Analysis

6.1 Introduction

This is the findings and analysis chapter of the research. Chapter six presents the analysis and the findings gathered from the semi-structured interviews from the first thematic interview questions which covers the administration and management issues.

As explained in Chapter 5, the semi-structured interview findings will be tabled out using focus coding analysis to give a systematic thematic approach to the findings. In addition, secondary data, using an unobtrusive approach, will be used to substantiate the findings and, where possible, such data will be highlighted to add further depth and latitude to the research.

There are thirteen interview questions. They are segmented according to the following themes;

(i) Administration and management issues in *waqf*

(ii) *Shari'ah* and legal issues

(iii) Investments, financing and development

The findings of the semi-structured interview will be tabled and analysed based on the above segmented themes. While focus coding themes are done separately for the legal, *fiqh* and *shari'ah* issues, the findings will be incorporated in the two broad themes which are the administration and management issues, and the investments, financing and development issues in *waqf*.

There are many factors which can affect the efficient contemporary *shari'ah* structuring of *waqf* assets. Hence selected and important questions have been put forth to gauge the extent of the problems. However, interviewees also have their own opinions of what constitutes the problem and hence may bring up new factors which are not incorporated in the questions. These other factors which have been identified as necessary and important will be included in the analysis as well.

Chapters six and seven form part of the analysis. In chapter six the analysis will focus on the administration, management and development issues. The *waqf* legal and *shari'ah* issues will be incorporated in both Chapters 6 and 7. In Chapter 7, the findings for the financing, investment and the Real Estate Investments Trust will be analysed. Subsequently in Chapter 8, policy recommendations, proposed structuring of *waqf* REITs and contextualising the other proposals for a new model of *waqf* management will be suggested after taking into consideration the findings and analyses that have been discussed in Chapters 6 and 7. All the findings from the semi-structured interview will be supported by the secondary sources gathered from the Islamic Religious Council of Singapore (Muis) which is the case study institution for this particular research.

Questions on the administration and management of *waqf* assets are tabulated below. These questions delve into the factors which need to be analysed individually on the successful management of *waqf* assets. Understanding these factors will focus on the management issues which need to be tackled in structuring the assets successfully in future.

From the interview responses, there are basically five factors which are deemed important when it comes to the successful management of *waqf* assets. Please refer to table 6.1 which was compiled from the responses from the interviewee.

It is important to state that in the analysis of question 1, focused coding 1 relates to general and specific *shari'ah* issues, which will feature under their own questions as well. In order to develop an integrated understanding of the *shari'ah*-related issues, therefore, an exception was made to bring together all the *shari'ah* related matters after focused coding 1 of question 1. While it may represent a deviation from the normal flow of the analysis in a classical sense, in terms of analysis it may be considered as more efficient.

6.2 Administration and Management of *Waqf* Assests

The answers to the Question 1 on administration and management issues in *waqf* are presented in Table 6.1 below.

Table 6.1: Results for Question 1 (Administration and management issues in *waqf*)

Question 1	What are the factors that contribute to the successful management, administration and development of *waqf* assets?
Focused Coding	
1	Innovation and creativity in *waqf* management and development
2	Human capital • highly motivated • passionate • talented • strong leadership • willing to take more risks • highly knowledgeable
3	Legal and governance issues • good governance • good legal framework • efficient infrastructure
4	Progressive fatwa and *shari'ah* interpretation
5	Easy access to *shari'ah* compliant financing
Theme	Factors that contribute to the successful management of *waqf* assets must have the elements of innovation and creativity, highly talented, passionate people with strong leadership, great vision and a willingness to accept risk. In addition good governance and a legal framework with progressive fatwa and easy access to financing are important requisites.

The answers emanating from the focused coding above are then further broken down and analysed.

6.2.1 Innovation and creativity in *waqf* management and development

As illustrated in Table 6.1.1, innovation and creativity came out strongly as part of the attributes for successful management of *waqf* assets. Among the examples cited for the innovation and creativity are:

i) Asset migration exercise (*Istibdal*)

ii) Using long-lease tools e.g. 99-year leases

iii) Acquisition of new assets locally and globally

iv) Injection of new funds

v) Creating new models in managing *waqf* assets.

Table 6.1.1 Focused Coding Number 1 for Question 1(Administration and Management issues)

Creativity and innovation is an important aspect in enhancing *waqf* assets	
Interviewee 1	*Istibdal* or asset migration exercise is as an innovative tool for *waqf* development. Use proper planning and strategy for each assets to meet its full potential
Interviewee 2	The creative use of the long lease, such as 99-year lease or even 199-years lease. Creation of new *waqf* through the cash *waqf* concept. Create a compelling reason for creating *waqf* through strong and clear objectives for the *waqf* such as *waqf* for religious knowledge purpose.
Interviewee 3	Selling of properties on a 99-year lease and use the cash to expand on many more properties. Assets migration exercise. Going global on *awqaf*. Creation of cash *waqf*. Exporting of expertise to other countries
Interviewee 7	Innovation and creating new models for managing *waqf* assets and challenging the status quo.
Interviewee 8	Assets migration exercise and injection of new funds
Interviewee 9	Assessed the potential of each *waqf* properties, such as change of use of the property
Interviewee 10	Through assets migration exercise, creation of new *waqf* and partnering with the global *waqf* authorities.
Interviewee 11	Asset enhancement strategy example in the Chancery Lane project.
Interviewee 20	Redeveloping existing properties and getting Warees to head lease it.
Interviewee 25	Creative new model of property management and the need to go global

These examples will be discussed in further depth below.

6.2.1.1 Asset migration exercise *(Istibdal)*

Most of the respondents mentioned asset migration exercises as one of the factors that can enhance the value and income of *waqf* assets. This is not surprising as respondents have been attested on the ability of such a process to increase yields. This is also a widely held view in Muis, due to the fact that the exercise has resulted in the *waqf* obtaining the desired result. According to its records, it has embarked at least 80%[193] of its *waqf* on an asset migration exercise. To recapitulate, the reasons for an asset migration exercise are listed below.[194]

[193] Out of a total of 180 *waqf* assets, 80% has undergone an *istibdal* process according to an internal document of MUIS as at Sep 2009. In addition almost 90% of the *waqf* has been developed. Extracted from Muis *waqf* brochures.
[194] Refer to chapter 3.

- Where the assets are not in a good location in terms of premium or promiscuity of the location.
- Where the assets are dilapidated and need renovation.
- Where the assets on their own do not command a high rental yield

The example of the 11 Beach Road property will be used to show the merits and also the problems with such an exercise. For 11 Beach Road, using the tool of *istibdal* has made it possible for 43 *awqaf* which fit the above criteria, to undergo an asset migration exercise. The 43 *awqaf* represented a substantial 43% of the total *waqf* under the Muis portfolio. This constitutes a total portfolio of SGD30.76 million[195] (Muis, 2008). Current properties that can be identified for asset migration exercise are very limited to perhaps only around ten properties[196]. Hence without new injections of *waqf*, there will be an inadequate supply of *waqf* to repeat the same exercise. Besides this, there are other factors which impede the assets migration exercise such as building restrictions imposed on the development of *waqf* building, which is designated under conservation[197]. In the case example in Chapter 3, it was discovered that performing the *istibdal* process for the property the *waqf* cannot be mortgaged. Hence it has to sell off its *waqf* properties before purchasing it. Further discussion and analysis on mortgage and borrowings will be addressed later in this chapter. In view of this restriction, these questions need to be asked. How can the *waqf* go through its development? Will it jeopardise the need for the *waqf* to go into development? Will it benefit the *waqf* totally? If *istibdal* can be used loosely will it then affect the true spirit of the *waqf* which will result in the realisation of the *waqif* initial intention to purchase the said properties?

The structure of the asset migration exercise for the 11 Beach Road properties can be seen in Chapters 3 and 4. However, what this section seeks to highlight are the merits and problems when dealing with an *istibdal* process and how gaps can be filled and improved in future.

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[195] There are 99 *waqf*, 43 waqf are under Fusion Investment. Fusion investment is the company that holds the 11 Beach Road property. Valuation on the total investments in Fusion for the amount of SGD$30.7 million is as at 31 Dec 2008- source Muis.

[196] Responds from the Senior Manager of Warees on the estimated number of properties that can still have the potential for assets migration interview done on Feb 2009 at Warees office.

[197] Conservations building needs approval from Building and Control Authorities (BCA) which based its guideline on the Heritage and Conservation society which imposed very strict conditions on the structure of the building to preserve the authenticity of the historical site. For more details please refer to BCA website at http://www.ura.gov.sg/conservation/mod3.htmt;. Accessed on 25th Apr 2010.

Istibdal has resulted in better yields for the *awqaf* at least same as in the case of the 11 Beach Road. Some of the *waqf* have reported better yields after the migration exercise. Secondly, the *waqf,* which is in the form of cash, is able to still own property even if the amount is too small for it to be able to buy a single property on its own. Thirdly the *waqf* property is also able to be located in a prime area with better prestige.

However, in performing *istibdal*, it is important to state that firstly the need to be cautious in exercising *istibdal*, as there may be disadvantages revealed by this exercise as well. In Singapore, as the experience over the years has shown, development of certain areas can change. An area with low rental yield can in future develop into a prime area which can fetch high rental yield. A case in kind is the *waqf* located at 87 Arab Street. Over the years, the rental yield for the area has been quite low and there seems to be difficulty in getting tenants for the properties due to the lack-lustre business environment in that area. Hence the decision to develop the property seems not to be beneficial for the *waqf*. Therefore an *istibdal* process was initiated so that the property can fetch a higher rental yield. However if we look at the area now, it is a thriving business and tourism centre. Indeed, the area has been identified by the government as a heritage and tourist attraction. Due to the development of the surrounding area, it is now popular with both locals and tourists alike. Therefore, by looking at yields alone, *waqf* administrators may miss the social and personal preference of the *waqif* for choosing the kind of property or assets that have been bequeathed. It is also important to note that a *waqf* which was created in a certain area may have a particular historical attachment to the property. A case in kind is the properties in Arab Street. It may be the intention of the *waqif* to ensure that the *waqf* is placed in the same village where the *waqif* used to reside and where the cultural and religious activities are concentrated. Therefore removing many of these *waqf* properties to be relocated to other areas may remove the historical attachment of the *waqf* and its surrounding area and may also be detrimental to the *waqf* in future. In the case of 11 Beach Road a total of 43 *awqaf* have been consolidated in one property. While consolidation and the theory of economies of scale have their merits, they also have disadvantages. The fact that the administrators have put all their assets in one single property may be similarly detrimental to putting all their eggs in one basket. If the property does not perform well all 43 *awqaf* have been placed in the single property investment may suffer the same fate. However, if a single *waqf* property runs into trouble that will affect only that particular *waqf* and the problem will be localised to that particular *waqf*. But with consolidation the whole *waqf* may be put at risk.

It is also important to note that while *istibdal* is being practised widely in Singapore *waqf* properties, it has not been tested where multiple *istibdal* is allowed. So far there has not been more than one *istibdal* performed on any of the *waqf* property. Most have only gone through a single *istibdal* process.

However, *istibdal* has been allowed generally by the fatwa committee. The act of *ibdal*,[198] that is the exchanges of property for cash is something which has not been tested by the fatwa committee and the Muis council. So far in such cases the fatwa committee has been more reluctant to allow for an *ibdal* as property which is actually seen as a more permanent and physical asset. However, one of the interviewees who is a fatwa member, quoted that in any asset there is a value attached. Property has its value and property can appreciate or depreciate. Cash, if it is invested in stocks and shares will also have its own value and it can appreciate and depreciate. Most important is how we ensure that the value of the corpus of the *waqf* is not affected and that the perpetuity status of the *waqf* is protected. In all the cases of the *istibdal* process, the fatwa will require that another property be identified so that there is less risk and replacement property is identified in advance to protect the continuity of the *waqf*. For example in the 11 Beach Road case, the *waqf* to be sold has been identified and the assets to be migrated have also been identified. Therefore in order to proceed with the *istibdal* process, the *waqf* will be required to borrow and therefore mortgage its property first to obtain the necessary financing. This, therefore, leads to the question of whether the *waqf* is allowed to borrow and subsequently whether the *waqf* property may be mortgaged. Therefore in the subsequent section, as mentioned in the introduction, the *shari'ah* theme has been incorporated to identify if there are any issues of *shari'ah* compliance which need to be considered, such as the case with the coding of question 4 in Table 6.2.

[198] *Ibdal* is the selling of the corpus of the *waqf* for cash

Table 6.2: Answers to Question 4 (*shari'ah*)

Question 4	Are *awqaf* allowed to borrow?
Focused Coding	
1	*Awqaf* are allowed to borrow as long as it does not risk the *waqf* in the long term
2	*Awqaf* are allowed to borrow but it cannot mortgage its property
Theme	Generally *awqaf* are allowed to borrow but there should not be undue risk posed to a *waqf*

Table 6.2.1: Focus coding number 1 for Question 4 (*shari'ah*)

Awqaf are allowed to borrow as long as it does not risk the *waqf* in the long term	
Interviewee 4	As long as it does not risk the *waqf* and the beneficiaries interests are protected
Interviewee 5	Finance need to do the calculation of risk involve in borrowing, underlying principle it should not risk the *waqf* in the long term
Interviewee 6	Yes *waqf* are allowed to borrow as long as it will not unduly risk the *waqf* .
Interviewee 13	Borrowing for *waqf* needs to be calculated and as far as possible not to borrow for too long a period.

These questions on the borrowings of *awqaf* were initiated to obtain the views on the *shari'ah* perspective. From the many case studies cited it was already known that most of the *awqaf* have entered into a borrowing contract with *Bait-ul-mal*. All borrowings recorded were under an internal borrowings arrangement. So far no external borrowings have been made between a *waqf* and external parties.

All the interviewees agree that *awqaf* are allowed to borrow as long as it does not create risk to the *waqf* and the beneficiaries' interest are protected. Interviewee 4 mentioned the interest of the beneficiaries must be protected due to the fact that if the *waqf* borrows for a very long period of tenure but needs to make a repayment, the amount the beneficiaries share will be affected. This is where Muis has made a policy whereby 80% goes towards paying the loan and 20% towards the disbursement to the beneficiaries. However, due to the large size of the loan, it is possible that the amount due to the beneficiaries will be very small and as a result the amount will not be beneficial to them. Accounts of *waqf* Jamae (WA/22) for the year 2008 below in Table 6.3 provide evidence for this.

Table 6.3: Extraction of *waqf* Jamae accounts for the year 2008.

Income	$1,344,802
Expenditure (exclude impairment loss ie book entry loss)	$390,590
Net Income	954,212
Disbursement for the year	311,800

Source: Muis Annual Report 2008

Table 6.3 shows that only about 30% of the income is disbursed to beneficiaries and the balance are used to pay for the borrowings. Since *waqf* Jamae has a substantial income, it can still benefit the mosque, and the amount after development is higher than before. However for a smaller *waqf*, in this case the example of *waqf* of the Arab Street Educational Trust, an amount of $12,136 was disbursed in 2008[199]. This amount is too small to enable the *waqf* to carry out the intention stipulated in the will.

So what is a fair amount that a *waqf* can borrow? Currently there is no written policy on this. According to interview 13, the amount should be calculated on the affordability of the *waqf* and a maximum repayment period so that the *waqf* will not be burdened with repayment and the beneficiaries can still look forward to a continuous contribution from the *waqf*. However, the guidelines for statutory boards stipulated that they are only allowed to borrow not more than 60% of their assets.[200]

According to the *waqf* accounts, the following are the *awqaf* with their various borrowings and tenure. In total as at the end of financial year 2008, the total borrowings by *waqf* through the *Bait-ul-mal* Fund and the mosque amounted to $19,867,905.[201]

[199] Figure extracted from Muis *Wakaf* Financial Report for FY2008.
[200] Internal guidelines on Investment for statutory board issued by the parent Ministry.
[201] Ibid footnote 200.

Table 6.4: Sample of *waqf* borrowings

Name of *waqf*	Balance of loan amount (FY2008)*
Jamae	628,922
Masjid Abdul Ghafoor (WA/20)	22,800
Arab Street Educational Trust	116,083
Bencoolen Street Mosque	2, 243,436
Kader Dawood Meydin	2,704,398
Khadijah	1,319,069
Masjid Abdul Hamid Kg Pasiran	510,753
Sh Abdullah b Said Makarim	291,282
Sh Zain Alsagoff	413,472

Source: Muis Wakaf Funds, Report and Financial Statements 2008

Table 6.4 confirms some of the *awqaf* which took up loans from *Bait-ul-mal*. For example, *waqf* Jamae accumulated a loan of $5,396,388 in the year 2000[202] which was advance from *Bait-ul-mal.* The loan started in 1994 with an amount of $284,000 and peaked in 2000. Subsequently, after 15 years it managed to pay off its debt.

Therefore looking at the issue of borrowing, the *waqf* is allowed to borrow. However, there are no guidelines on how long and how much it can borrow. Therefore, guidelines need to be established as to the level of affordability of a particular *waqf*, looking at the risk involved in repayment and the effect it may have on the distribution to the beneficiaries.

Another issue is that there is no legal provision in the AMLA that clearly allow a *waqf* to borrow. Even under the power of the Majlis which has to comply with the provisions of section 5, the, recent amendment made in 2008 does not include any provision for Muis to borrow. Therefore, to ensure that there is legal protection for the *waqf*, legal provision must be clearly specified in AMLA, so that there is no ambiguity on the permissibility of *waqf* to legally borrow, else it can render the borrowing contract void. However, such provisions are provided in the India *Waqf* Act. The Selangor *Waqf* Enactment also does not provide clear provision

[202] The amount is based on FY 2000 Muis Annual Report under *Wakaf* Jamae Fund. After 2000 there was a repayment of the amount.

for a *waqf* to borrow. The only provision is that the *waqf* management committee with the approval of the Majlis may develop and invest the assets of the *waqf*.[203]

In the recent financial reports, under Note 4 of the Muis *Waqf* Funds Financial Report for the year 2008, the total borrowings for all *awqaf* stood at $19,867,905. Of this amount $8,531,905 are classified as interest-bearing borrowings and the balance are borrowings based on the *Musharakah* bond structure which is classified as non-interest based borrowings. However, interestingly, the internal borrowings are all from *Bait-ul-mal*. Therefore can *Bait-ul-mal* charge borrowings on an interest bearing basis? Currently *Bait-ul-mal* is charging the *waqf* for borrowings, therefore this will be tantamount to a *riba'* transaction which is prohibited in Islam[204] (F. Rahman, March 1969). Can *Bait-ul-mal* instead enter into a *shari'ah*-compliant manner of developing the *waqf* or exercise a *qard hassan*[205] concept in its borrowing terms to the *waqf*? This issue will be discussed in chapter 8.

Table 6.5: Focus coding number 2 for Question 4 (*shari'ah*)

Awqaf are allowed to borrow but it cannot mortgage its property.	
Interviewee 4	As long as it does not risk the *waqf* and the beneficiaries interest are protected
Interviewee 5	Finance need to do the calculation of risk involve in borrowing, underlying principle it should not risk the *waqf* in the long term

6.2.1.1.1 Mortgaged of *Waqf* properties

The findings above is in line with the decisions made by the *fatwa* committee in Singapore whom has not allowed for the mortgage of properties[206]. The previous fatwa mentioned that as long as the *waqf* was not put at risk then there should not be of major concern; hence mortgage of the *waqf* properties can put the *waqf* property at risk. However, decisions can be reversed if there is a greater risk of the *waqf* being acquired than if it is not developed; and if mortgage is the only option for obtaining the finance, then it should be allowed. The *Bait-ul-mal* can also act as guarantor for

[203] Waqaf (State of Selangor) Enactment 1999, second schedule (Sec.31) Waqf Mgt Committee sub sec. 24.
[204] Islam prohibited the charging of interest on any borrowings or loan. This is classified as *riba al-fadhl*. Quran 3:130, 2:275-279,4:161
[205] *Qard Hassan* is a loan without charging of interest. The Quran stipulates a few verses on debt Quran 2:280, 2:282
[206] Fatwa dated 5 Mar 1992, minutes of meeting of the fatwa committee 1989/92 of the Majlis Ugama Islam Singapura. Questions asked: "Can the assets /land of the *waqf* be used as a mortgage to get a loan?" Answer by the fatwa committee: "*Waqf* assets cannot be mortgaged for a loan because an asset which cannot have the characteristic of sale and purchase cannot be mortgaged." This applies to the alienability of waqf assets, hence the reason why mortgage of *waqf* asset is not allowed

the *waqf*, which is the practice in the development of most of the *awqaf* in Singapore. In the *Waqf* Law of India Section 51, in any mortgage or sale of the property, the *mutawalli* must obtain the approval of the board.("The Wakf Act, 1995," 1995) This provision is put in place in case the *waqf* needs to have a mortgage on its property.

Hence, if you need to purchase a property for *istibdal* purposes, the existing *waqf* cannot be mortgaged. In such cases the *waqf* needs to purchase the property first and then sell it off once the new property is bought.

Without the permissibility of mortgage, the process of selling a *waqf* becomes difficult. The case of 11 Beach Road is possible because the *Bait-ul-mal* acted as the guarantor to the structure and hence all liabilities were transferred to the *Bait-ul-mal*. If the *waqf* were to take up its own financing, such an arrangement would not be accomplished without some kind of mortgage attached to the property. Hence the alienability and the risk element in a mortgage arrangement are important factors in the underdevelopment of *waqf* assets according to Kuran (Summer 2004). This however can be circumvented by getting a third party to guarantee the liability.

In the case of 11 Beach Road, during the asset migration exercise, one of the difficulties faced was that the various *waqf* assets which were identified to be sold, need time to obtain the best sale price. In dealing with many properties for asset migration, the problem is that in order to get the best price, time is needed to market the property and to select the best price from the prospective buyers. In the case of 11 Beach Road, it was noted that there were still *awqaf* which had been identified for the asset migration exercise which had not been able to sell their assets as property prices had fluctuated and the criteria to sell within valuation had not been met. The property which in the first place had been identified did not have a high investment value due to its location. In addition, the condition of the property rendered it unsellable. So far 12 units have been sold[207] of the original 20 identified, so eight more remain on the list to be sold. Because the *Bait-ul-mal* is available to provide a bridging loan for such transactions, the model for such a migration exercise is possible. It will be difficult for the *awqaf* to go in individually without the help of a third party to ease the transaction. However the flaw with this transaction is that since the *waqf* has been identified as a shareholder in the property company, its interest has been affected and recorded. To illustrate the effect of the transaction, please see the *awqaf* accounts for

[207] Based on interview. Figure as at Feb 2009.

FY 2007. The accounts for the *Waqf* of Daeng Tahira Daeng Tadaleh WA 8, show $7,298,495 as a loan to a subsidiary. On the other hand an amount of $1,281,506 was reflected as the investment capital in Fusion Investments Private Limited. To appreciate the transaction details, a summarised accounts and the transaction statement are produced in Table 6.6.

Table 6.6: Summarised version of the Wakaf Hadji Daeng Tahira Haji Daeng Tadaleh Account for the financial year 2008.

	Amount SGD ($)	**Remarks**
Income (interest)	321,777	The income from Fusion Investments Pte Ltd is stated as interest because the investment is reflected in the book as a loan to Fusion instead of investment. There is no dividend recorded in the books. [208]
Expenditure	(4,660)	This is a write-down on the diminution in value of the assets. Technically there is a capital gain for the assets during the year based on the valuation of the properties.
Surplus/(deficit)	317,462	
Capital	8,256,264	
Represented by:		
Cash and other receivables	161,450	
Short-term loan to subsidiary	7,298,495	This is a huge amount which was previously held in fixed assets, that is property which has now been reduced to a mere short-term loan to a company. The amount is recorded as such to obtain a tax advantage for the Fusion Investment Co. Which is tax at the prevailing company tax rate. If interest expenses are recorded then there will be less profit for the company and hence the company will pay less tax. This also arise from the fact that taxation policy views interest as an expense item, hence the reason for the proliferation of companies to raise capital via debt rather than equity.(El-Gamal, 2006) [209]
Investment in subsidiaries	1,281,506	This is the actual amount the *waqf* invested directly in the company which owns the properties.
Total Assets	8,699,071	
Less liablilities	(443,153)	
Total Fund	8,225,918	

[208] The reflection of the accounts is such because current accounting standards do not recognise the *musharakah* bond as an investment product. It is still recognise as a debt instrument. Hence it has to be reflected as such. See Muis annual report for financial year 2007.

[209] See El-Gamal's comment on the use of such incentives to proliferate the use of debt-financing as opposed to equity-financing. Hence he proposed more incentives must go into equity financing. El-Gamal, M. A. (Ed.). (2006). *Islamic Finance - Law, Economics, and Practice* (1 ed.): Cambridge University Press

The above transactions show that while *istibdal* indicates that there is a returns benefit, the practical problem, such as migrating the assets physically to get the right price so that the *waqf* will not be worse off, will take time to solve. In so doing the *waqf* may suffer some financial loss. In the transaction above, it must be noted that the *waqf* should not allow itself to be in the loan position for too long. Firstly, it is not right for the *waqf* to earn interest. Secondly, this transaction has resulted in the *waqf* having to dilute its capital which is not allowed for *waqf* properties. That is, the *istibdal* must not put the *waqf* at risk. In this instance, while the *waqf* has received a better yield than before, the problem is that the temporary placement in debt is not an acceptable form for its assets.

In Chapter 4, it was discussed that the assets were acquired through a company instead of a direct purchase of assets in order that this would not attract stamp duty of 3%. Purchasing a company will only attract a stamp duty tax of 0.02%.[210] Hence, the cost of purchasing the asset is greatly reduced. However, in the long run this will not be viable. The shareholding needs to be changed and a tax-exemption status for the company should be claimed since it is 100% held by the *waqf*. Since the income of the *waqf* is tax-exempt, what the *waqf* can do is to request a tax refund on the dividend it receives.

There are numerous accounts of *istibdal* being exercised by Muis, in fact it accounts for almost 80%[211] of the *waqf* assets. In contrast, the Federal Territory State of Kuala Lumpur has recorded only three *istibdal* cases (Mahamood, 2006: 123). Hence Muis has maximised the usage of *istibdal*. The tool of *istibdal* can further increase benefits if the exchanges are made on a 99-year leasehold title. Following this, respondents mentioned the creative use of the leasehold title.

6.2.1.2 Using the leasehold title to expand the capital base such as selling *waqf* on a 30- year lease or 99-year leasehold title.

There is a total of 22 *awqaf* or 192 properties as at FY 2008, under 99-year leases with a total present value of SGD$102.67 million which have a revisionary title,[212] that is, after the expiry of the lease the properties will revert to the *waqf*. Table 6.8 below shows the assets which have exercised the long-lease sale. There are

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[210] See stamp duty tax rate at www.iras.com.sg. Accessed on 7th July 2009.
[211] See footnote 192.
[212] Based on FY 2008 annual report

also assets which were sold on longer leases than the traditional 99-years. Some *waqf* properties are being sold on 199- year or even 299-year leases.[213] In essence, by using this tool the number of *waqf* assets can be multiplied albeit a long period of lease is undertaken.

Table 6.7: Examples of *waqf* on a reversionary interest based on lease.

Assets	**Leasehold title**
Wakaf Kassim	Wisma Indah – 40 properties – leasehold title commenced in 1995 - leasehold expires in 2094
YAL Saif Charity *Waqf*	33 units of Leasehold title commence in 2002 and expire in 2101.
Waqf Daeng Tahira Daeng Tadaleh	Sale for 199-years lease. Leasehold title commenced in 2002

The number of *waqf* properties will almost double by 2105, and hence the expansion using this tool is phenomenal. In addition, the amount of money which it receives today has already been used to purchase other assets. For instance, Chancery Lane is an example of capital expansion through development, leasing the property and investing the proceeds from the sale of the leasehold properties. See Table 6.8.

Table 6.8: Examples of *Waqf* Saif Charity Trust in using the 99-year leasehold title to expand the *waqf* assets.

Current Assets	Developed assets	Profit calculated
6 Bungalow units – with a valuation of $10,000,000	Development of assets – 33 units with total sales of $50 million. Net profit after development and management fee of $20 million	The *waqf* are now able to get $20 million in development of its assets as compared to $10 million if it had not been developed. Thereby the assets are enhanced by an additional $10 million which is a 100% gain. On top of that the *waqf* also sells the property on a 99-year leasehold which will have a reversionary title back to the *waqf* on expiry. In this case, the *waqf* will have the 33 units back after 99 years and the $10 million that it received will be further invested in other assets which will give the beneficiaries an even better income than it had initially.

[213] See table 6.7

Are there any *shari'ah* issues in the selling of *waqf* properties on a 99-year leasehold?

The answers are shown in Table 6.9.

Table 6.9 : Answers to Question 3 (*shari'ah*)

Question 3	Is a *waqf* allowed to enter a long lease such as a 99-year lease.
Focused Coding	
1	*Waqf* cannot be sold but can be leased as long as the *waqf* is not terminated.
2	Long-lease will be an issue if there are high risks that the *waqf* may lose its property.
Theme	Generally 99-year leases are allowed as long as there are measures to ensure that the property is not lost.

Table 6.10: Focus coding number 1 for Question 3 (*shari'ah*)

Waqf cannot be sold but can be leased as long as the *waqf* is not terminated.	
Interviewee 4	As long as the *waqf* is not sold and being terminated any lease is possible
Interviewee 5	In our case since we are multiplying the *waqf*, 99-year lease or longer there is no issue as ownership will revert back.
Interviewee 6	By doing this you are multiplying the *waqf* so there is no problem.
Interviewee 13	Longer lease are tools in the expansion of *waqf*.

All the interviewees agreed that long lease is still acceptable as it is not an outright sale. In fact it is an additional initiative that will result in the expansion of the *waqf*. In the first place an *istibdal* is already used for the sale of the initial *waqf*, meaning the *waqf* will already get a replacement property. To sell it on a long lease is therefore not necessary. Most of the interviewees think that by entering into long-leases, Muis is in fact expanding the *waqf* because after 99 years or longer the property will revert to Muis.

The property which is sold on a long-lease basis will be replaced with a free-hold property. That is the current guideline used according to the *waqf* officer.

One of the interviewees further explained that in the earlier days the long lease was not allowed because there was no way that the *nazir* (administrator) could guarantee that the *waqf* would not be sold or misused. There was no proper recording being done that would ensure that the *waqf* would not be lost in time. In Singapore, all properties are registered with the Singapore Land Authority (SLA). In the case of sale on a leasehold basis there are three ways to ensure that the reversionary interest of the property for the freehold title will be revert to Muis by taking the following measures. Firstly, the issuance of a nominal rent invoice to the owner of the leasehold title. In this case Muis can monitor the ownership of the property concerned. Secondly, by having notes to the account in Muis financial report where the reversionary interest of these properties is stated. Thirdly, Singapore Land Authority will also have the record of the freehold title ownership of the said property. The record of the reversionary interest was discontinued by Muis several years ago, this should be reinstate as it is a good way of monitoring the property ownership.

Table 6.11: Focus coding number 2 for Question 3(*shari'ah*)

Long lease will be an issue if there are high risks that the *waqf* may lose its property.	
Interviewee 4	Long lease are not allowed if it will result in the *waqf* getting a lesser amount and unable to replace its property.
Interviewee 5	The underlying principle is to protect and enhance if it is risky than it should not be allowed
Interviewee 6	Not allowed if it will make the *waqf* lose out
Interviewee 13	Definitely not allowed if it is detrimental to the *waqf*.

All the interviewees agreed that a long lease need not be to the detriment of the *waqf*, meaning in this case, if selling on a leasehold title will entail a discount on the price of the *waqf*. Typically, a discount of 15-20% of the sale price is expected if the property is sold on a leasehold basis. However if the price is heavily discounted then it will not be in the best interest of the *waqf*.

We shall examine below the questions and answers for legitimizing the 99-year lease for *waqf* properties. Some questions are asked of lawyers and property experts and some are extracted from the relevant laws. These questions do not form part of the semi-structured interview, as that was concerned with very specific questions on the nature of leasehold titles in Singapore, and is depicted in Table 6.12.

1. Is a 99-year lease the same as a sale? Yes and no. Although we understand this from the interviews conducted with the *shari'ah* scholars, see Table 6.12 they mentioned that it is not a sale but more of a lease, hence the legitimacy of the transaction. Explanation for the differences can be found in Table 6.12.

Table 6.12: Differences of property sold on freehold basis and on leasehold basis.

Features	Sale on leasehold basis	Sale on freehold basis
Tenant		No landlord tenant relationship. No rental fee, property tax, maintenance. Other expenses related to the property shall be borne by the leasehold owner. Allow authority to sell to other parties, no permission needed to the freehold owner.
Security of reversionary interest.	A nominal rent is charged annually to ensure that the reversionary interest is being monitored and to update on the new owner of the property if there is subsequent sale carried out. Indication of the reversionary interest is reported in the notes in the annual report of the property. Reversionary interest is also lodged in the register of the Singapore Land Authority.	
Reversion of property	Property will revert back to the owner after expiry of the leasehold period.	Property will never revert back to the owner

From the above it shall be noted that there are safeguards in place to ensure the property reverts back to the freehold owner. In the listings of the *waqf* properties held by the Islamic Religious Council of Singapore, there are few which are sold for more than a 99- year lease. Leasehold titles up to 199 and 299 years have been perused. See Table 6.7.

Can a *waqf* legitimately enter into a long lease, say of 99 years? The interviewees agreed that generally 99-year leases are allowed as long as there are measures to ensure that a property is not lost. In this case, based on Table 6.12 and the situation in Singapore, it is generally allowed for *waqf* to enter into a 99-year lease as stringent processes and reliable records are in place to ensure the reversionary interest of the property is protected. And the fatwa is clear that the proceeds received from the sale of properties are to be used for the purchase of another property of a freehold nature. Hence, the issue of leasing or selling for 99 years is not a problem.

However, there were some strong sentiments from the *waqif* on the use of the said property. It is possible to impose restricted covenants on the usage of the property on the buyer. But this has never been done before.[214] By having a restricted covenant, it may be possible to ensure that *waqf* properties are not used for activities prohibited in Islam. To include any legislation to restrict certain kinds of sale or activities on the sold *waqf* properties may render the *awqaf* later be at a disadvantage for later sale. There will be marketability problem. However, due to the sensitivite of the nature of *awqaf* properties, and their strong religious features, the covenant should ensure that the sanctity of the *waqf* is protected.

Most of the *mazhabs* have not allowed for the leasing of *waqf* for more than 5 years let alone for 99 years[215]. However, disallowing such practices arises because of the peril that there are inadequate secure guarantees that the properties will not be lost. Here the risks of loss are higher if a property is not developed. In this case the element of risk should be looked into. This is substantiated by the analysis presented by the *shari'ah* issues on the subject of leasehold properties discussed earlier in this thesis. This is a lengthy discussion on legitimizing the 99-year lease for *awqaf* properties.

6.2.1.3 Acquisition of new assets locally and globally

The other factor raised by the interviewee on the innovation of *awqaf* is that they need to acquire new assets locally and globally. This is usually done via the *istibdal* process and is merely an exchange of assets from the *waqf* pool. However, there has been no record of acquisition of assets for the creation of new *awqaf*. However, cases of beneficiaries acquiring assets through this manner have been done: a case in kind is the *waqf* of Masjid Sultan where the mosque has actually acquired its own assets as a result of surplus funds. The Masjid Al-Abrar has also acquired shop-houses to generate income for the mosque. There is also a need to create a vehicle to pool new injections of funds for the creation of *waqf*. Locally, public education can be done to raise funds and to entice people to create more *awqaf*. Globally, there is

[214] Based on legal opinion, emailed to law firm dated 12 April 2010.
[215] See chapter 2.

further potential but there are also many factors to look out for when acquiring cross-border assets. This is because different countries have different laws and regulations pertaining to *waqf* assets. For example, in Saudi Arabia, foreigners cannot own properties[216], hence structuring a *waqf* property, say on a leasehold basis, are an option.

Locally, raising funds through the issuance of *waqf* shares, such as is being done by the Johore Corporation (Johore Corp), can be further tested. Johore Corp issues *waqf* shares to the public. The objective of the *waqf* share is to regenerate the act of charity and strengthen the economic and social status of the community (Gadot, 2006). Each share amounts to only RM10.00 per unit so as to encourage more people to participate. This is an act of philanthropy and the share is an outright *waqf*, i.e. dedicated permanently to the charitable cause (Gadot, 2006).[217] With the amount raised the capital is used to buy commercial properties, agricultural land and student hostels in Cairo. The income derived from these will be distributed for charity. This is one method of raising funds through the public. As quoted by interviewee no. 2: "you need good objectives for people to want to create a *waqf*, a good cause, without it your product lacks that 'wow' factor to compel people to channel their charity through the normal causes such as for the building of a mosque".

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[216]' The new Foreign Investment Law allows foreigners 100-percent ownership of the projects, as well as the property required for the project itself or for housing company personnel, while enabling them to retain the same incentives given to national companies. For example, projects that are 100 percent foreign-owned will be eligible for loans from the Saudi Industrial Development Fund. Investors will also be able to hold investment licenses in more than one type of activity. Reported in Saudi-online, press release dated Apr 10,2000.While foreign ownership is allowed for projects, land ownership for non-Saudis will still have restriction.Assessed on 21 may 2009 at http://www.saudiarabia-travel.org/real-estate.html, it states that foreigners are able now to hold 100% ownership for properties in Saudi Arabia. However for construction and investment foreign investors can also purchase private land for construction and investment, but also prior approval is required, and projects (buildings) must be valued at more than SAR30 million (US$7,998,933), including land and construction costs. However, foreigners cannot hold any properties in Mecca and Medina in the holy land. They can only lease the properties up to a maximum of 2 years. Accessed on http://www.globalpropertyguide.com/Middle-East/Saudi-Arabia/Buying-Guide. on 21 may 2009.

[217] The fatwa rulings on the *waqf* shares have been obtained through the '*Majlis Akademi Islamiyah'* (Islamic Academic council of Malaysia) on 24 Nov 2005 which is cited from the paper presented by Dato' Hj Nooh B. Gadot as follows:
" *Adalah harus mewaqafkan bahagian-bahagian dan saham-saham syarikat kewangan yang diperniagakan dalam dagangan yang diharuskan oleh Syarak dengan syarat saham-saham ini beserta keuntungannya diagihkan sejajar serta mengikut syarat-syarat yang telah ditentukan oleh pewaqaf dimana ia adalah seperti nas Syarak iaitu satu kaedah yang telah disepakati oleh Ulamak*."
Translated version as translated by researcher:
It is permissible to *waqf* parts and shares of permissible finance companies which is being traded under the Islamic law with the condition that these shares together with their profit are distributed in line with the conditions that have been stipulated by the 'donor'(*waqif)* where it is like the condition of the *shari'ah* a methodology which has been agreed by the *shari'ah* scholars.

One of the challenges of creating a cash *waqf* is the raising of funds through the public. Another is ensuring a competent team to manage the funds that have been raised. While this has not been done before for *waqf* funds, it is a viable option and should be pursued further. Shaik Abu Bakar proposed the creation of cash *awqaf* to be established in Singapore (Shaik Abu Bakar, 2004) A model was drafted, but the project has not taken off.

6.2.1.3.1 Going global on *waqf* management

One of the interviewees also cited the need to go global on *waqf* management as he sees that it can easily be leveraged on good infrastructure and Singapore reputation for being one of the best countries with which to do business.[218] Singapore can pride itself as having one of the best governances in the world. As quoted in the Straits Times by Mahbubani "Another of Singapore's big strengths is good governance. In May this year, Singapore will celebrate its 50th anniversary of good governance since self-government in 1959.

"As an amateur student of politics who has travelled around the world, I cannot think of any other developing nation that has enjoyed 50 years of good governance" (Mabhubani, 25 Mar 2009). On globalisation, as quoted from Mabhubani: "One of Singapore's greatest strengths is that it is the world's most globalised nation. The Foreign Policy magazine has a globalisation index. Singapore ranks No.1" (25 Mar 2009)[219] However, the world has been in a turmoil, economic conditions are worsening, the only way out is to de-globalised. Singapore is indeed very small. The number of *awqaf* properties or assets and the number of *waqf* registered are dwarfed by the numbers in Turkey, India and other Middle-East countries. However, Singapore with its small and overly high technology, good governance and highly effective operations and excellent legal system, can take advantage of this and is able to achieve a quantum leap in its development by expanding its *waqf* operations both at home and overseas. Going global means it can share its expertise and help to develop more *waqf* around the world. As mentioned by one of the interviewees on the need to export *waqf* expertise so that the best practices can be exported to overseas *waqf*.

[218] Singapore has been rated no.1 by World Bank for eased of doing business. World Bank Doing Business 2010 Report .

[219] The KOF Globalisation index is based on three main indicators; 1) economic 2) social 3) political. The KOF globalisation index rank Singapore no.1 in economic globalisation, overall ranking no.14 the information is assessed through http://globalization.kof.ethz.ch/ on 21 May 2009.

The Islamic Development Bank (IDB) created a World *Waqf* institution to spearhead the development of *waqf* around the world. Hence, the need to share different manners of development, financing and management is the key thrust to developing *waqf* around the world to the next level for there is a strong belief that *waqf* can help the poverty and economic problems of the Muslim countries.

6.2.1.4 Injection of new funds to create new *waqf*.

The fact that no new *waqf* was created after the formation of Muis in 1967 is a testimony that a lot more needs to be done on the public's education about *waqf*. The importance of the creation of new *awqaf* through the injection of new funds is very important. Combined with the globalisation of *waqf*, the public's education of *waqf* need not be confined to the local country only. It can also have a marketing effort to encourage more *awqaf* to be created in Singapore. Muis can position itself at the centre for *waqf* creation. Hence philanthropists who wish to set up their *waqf* here with Singapore's good governance, infrastructure and efficient management will be more assured that their *waqf* is well taken care of. One of the most important aspects for the *waqif*, is that they want assurance that their intentions are carried out. Yet minimal attempts are made to educate the people in Singapore informing them on the administration of *waqf*. Apart from information on the Muis website and a brochure, there has not been any aggressive marketing on *waqf* compared with the yearly aggressive promotion of *Zakat*. According to the annual report 2007, a total of $200,000 was spent on promoting *Zakat*[220].

In South Africa a year on year increase of 30% in *waqf* creation is reported. For Kuwait *awqaf* there has been an increase of 62% in cash *waqf* capital over 10 years, annualised at about 6%. This goes to show that with aggressive public education initiatives *waqf* can make a quantum leap in sums raised. With the new injection of fresh funds than the various initiatives of creating cash *waqf* and identifying *waqf* for acquisition locally and globally can be undertaken without which this cannot be achieved. Complementary to this is also the various tools that can be adopted in creating new injection of funds through the issuance of *waqf* shares, through the cash *waqf* concept and through public and private raising of funds such as the instruments of REITs. However in order to create new *waqf* the whole area of

[220] Muis Annual report 2007.

waqf management needs to be properly established so that a conducive environment for the creation of *waqf* can be established. This is where the next element of innovation in the *waqf* management is also an important factor raised by the interviewee.

6.2.1.5 Creating new models of *waqf* asset management.

Interviewees 22 and 7 mentioned creating new models for *waqf* asset management. There is in place new innovations, structuring models upon which Singaporean Muslims have embarked. These models were raised in an earlier example in this research. They were also mentioned in Chapters three and four. While many examples were cited earlier on financing and development innovations such as using 99-year leasehold titles, financing through *sukuk,* using the tools of *istibdal* has featured. This encompasses innovation in areas of administration and management as well. This statement can be verified as the Islamic Religious Council takes pride in constant innovation and setting itself high benchmarks for all its services. The innovations on administration such as being ISO certified, obtaining the Singapore quality class, are all new models of *waqf* administration. However, a bolder innovation and model is to provide alternative structuring of *waqf* assets – this may allow the proliferation of *waqf* creation by encouraging more waqf being created which will therefore lead to the setting up of a Regulating and Supervisory body.

Table 6.13: Focused Coding Number 2 for Question 1 (Administration and Management Issues)

Human capital is an important aspect in *waqf* management	
Interviewee 1	Able, talented, spirited and visionary people
Interviewee 2	People must have passion, broadminded, strong leadership and trust in the leadership
Interviewee 4	Strong and able leadership, from the Minister, to the Muis Council headed by the President and the fatwa committee. Trustworthy and capable trustees.
Interviewee 6	Sufficient manpower. Need to inject more manpower to do more developmental work.
Interviewee 7	Innovative, capable and strong leadership to make quantum leap changes
Interviewee 9	The need for attitude and mindset change that is to be more commercially driven and less risk-averse attitude

Interviewee 10	Slow decision-making in its people hence we need people who are decisive and not risk-averse.
Interviewee 11	Capable and sharp.
Interviewee 15	People must be decisive
Interviewee 20	You need trust and a commercial mindset
Interviewee 22	Capable and decisive
Interviewee 25	Capable and socially responsible.

The majority of the respondents cited human capital as the most important factor in ensuring the successful management of *waqf* assets. Hence staff can also attribute to the challenges faced in the management of *waqf* assets. Respondents cited leadership, skilled and passionate human resource as the ingredients to achieve successful management. The tight human resource allocation policy inherent in the Islamic Religious Council of Singapore has its pros and cons. The advantages are that because of a very lean human resource allocation, many of the functions have to be outsourced. Outsourcing means having a lean manpower base to provide greater flexibility in management and decision-making. In the current structure, most of the operational functions are being done at the Warees level, as Warees takes care of the accounting, development, rents and maintenance of *waqf* properties. The Islamic Religious Council will take care of the regulatory and statutory functions, such as appointments, renewals and terminations of trustees, applications of deeds etc. The financial investment such as surplus cash will be monitored and operated by the Finance Strategic Unit. Interviewees 2 and 4 felt that there should be a higher level of trust so that the risk-appetite can be enlarged. The current state is inadequate for *waqf* to see the next leap in its management. It will just sustain or, at worst, slip into complacency and this will not be good for the future management of the Singapore *waqf* assets.

Interviewee 9 commented that the risk-adverse attitude of the leaders is shaped by the nature of the institution that they represent. Muis is a statutory board and the management of community assets must be based on prudence and prevention of any risk that can adversely affect the community's assets. The thinking behind this is also shaped by the fact that a political backlash could happen if the assets are not protected properly. Hence, the natural risk-adverse attitude of the leaders is legitimised as statutory boards are not supposed to expose themselves to too many risks. However this attitude and risk-thresholds are not only shaped by the institutions but by the nature of the persons leading it as well. Some are more prudent while others are willing to take more risk. In Singapore, the government has created a performance-based bonus to engender more innovative, creative and risk-taking Singaporeans who are not afraid to fail. These important factors are needed to take Singapore to the next leap forward however to imbue such attitude in a civil servant is very difficult. Many efforts are made to institutionalise this attitude, for example, by increased training, merit-based and performance pay systems and other accelerated schemes to create the best manpower the civil service can have. However this unfounded fear in putting properties at risk will be analysed in the financing and investment of *waqf* in the next chapter.

In respect of the religious leaders, most of the respondents agreed that, so far, the religious leaders or scholars have been very supportive of the management of *waqf*. The opinions and fatwa have been very progressive and actually contributed a lot to the progressive management of *waqf* assets. There is evidence of exercising *ijtihad* more often in *waqf* matters.

As mentioned earlier by one of the respondents, although Singapore follows the Shafie *mazhab* for its fatwa, the fatwa committee will look at the matter and take account of the spirit behind the rulings. As a result, decisions are always based on the goodness of an act, that is the intention of the *waqif* to have the benefits accrue to the beneficiaries[221] (Kamali, 2007).

Interviewee 6 commented that there needs to be sufficient manpower. There is no doubt great potential for *waqf* to be developed further. Its threshold has not been met yet, therefore to do that more manpower is needed. Currently only one staff is looking at the legal, regulatory, administrative, financial systems in Muis. The staff reports directly to the head of the strategic unit. However, there are other supporting staff from the finance department who can oversee the needs of the investment, financial and accounting tasks of the department. The work chart of the *waqf* operations is depicted in Chapter 4, page 84, Diagram 4.1.

While Muis has outsourced its function to Warees and other entities, the out-sourced entity must also have the necessary skills to carry out the function as required

[221] The intention of the *ibadah* can be derived from the legal maxim “Acts are judged by the intention behind them”. Also derived from the *hadith* that states: Acts are valued in accordance with their underlying intention” (*Innama al-a’maalu bin-niyyah*). This is a comprehensive maxim that has implications that the ‘*ulama* have discussed in various areas, including devotional matters, commercial transactions and crimes. Please see : Kamali, Mohammad Hashim. (2007). "Qawa'id Al Fiqh: The Legal Maxims of Islamic Law". *The Association of* Muslim *Lawyers(UK),* 7.

by Muis. Moreover, Muis out-sourcing functions must be able to assimilate the religious, economic and social requirements in line with the Muis vision and mission in creating a Muslim community of excellence[222]. The out-sourced entity must also be aligned to this vision. Many of the *waqf* functions are carried out by Warees. However, during the interview differences in the level of risk tolerance and the kind of projects that Warees should undertake were detected. As a result, this mismatch thinking has led to a slow decision-making process and, in some cases resulted in projects which were not approved. Hence the problem with slow development, is not just merely the result of the structural set–up which was observed earlier but an injection of this mis-matches in people in their different ways of thinking and competence.

In the case of Majlis Ugama Islam Pahang (MUIP), one of the problem cited by Mohd Zawavi is that the lack of skilled manpower and training in *waqf* has led to a failure to expand and develop *waqf* in that country[223] (Abidin, 2006).

6.3 Legal and Governance Issues

6.3.1 Good governance

Singapore is a country where good governance is the pillar of government, and the country has always prided itself with the quality of its governance. The fact cannot be emphasised enough that Singapore is rated by World Bank as top in its governance indicator in the world[224]. Thus, such a political culture has implications for *waqf* management also. For this reason, interviewees reflected on good governance framework as discussed in this section, and the coded responses are depicted in Table 6.14.

[222] Muis vision is to create a Muslim community of excellence. Extracted from the Muis website http:\\www.muis.gov.sg.
[223] According to him there is a head of unit who is the economic issues officer and 14 other officers to assist him. However these 14 positions are not fully staffed yet. And all the officers who were recruited were not given any training for the job. Abidin, Mohd Zawavi Bin Zainal. (2006). *Pengurusan Tanah Wakaf Di Negeri Pahang: Satu Tinjauan.* Paper presented at the Pengurusan Harta Dalam Islam. pg 395.
[224] See footnote 218 and 219.

Table 6.14: Focused coding number 3 for Question 1 (Administration and management issues)

Excellent infrastructure with good governance and legal framework.	
Interviewee 1	Adequate transparencies, good legal and *shari'ah* framework
Interviewee 2	No governance issue, need to monitor our agents. Good legal and *shari'ah* framework
Interviewee 3	Adequate transparencies with audited accounts and annual stakeholders meeting
Interviewee 4	No governance issues and good fatwa committee and the important legal backup that is AMLA
Interviewee 6	Yes we have adequate measures in terms of transparencies, we created the disbursement committee. Strong legal environment in Singapore and strong governance
Interviewee 7	We created the disbursement committee to improve transparencies. Information on *waqf* are posted on Muis website. We have excellent governance and transparencies mechanism however we will improve it even further
Interviewee 8	Accounts are annually audited and there is too much checks
Interviewee 9	Being a statutory board comes with excellent legal, good governance infrastructure
Interviewee 10	Muis and Warees has good governance as we are working in the Singapore environment.
Interviewee 16	We have good legal framework just need updating on the AMLA and good governance practices but we need to keep on improving.
Interviewee 17	AMLA is a good legal framework and Muis have adequate governance framework
Interviewee 20	We have good legal framework and should pursue incalcitrant trustees
Interviewee 22	Good legal framework and sound operational systems such as ISO and Singapore quality class.

The governance issues commented by the interviewee are presented and explained as follows:

i) Board members (Council members)

On the issue of *waqf*, there is still the governance issue in terms of the Muis structure in the sense that the president of Muis is also the chairman of the council.[225] This anomaly has been raised and future amendments to the AMLA will be made to reflect the independent position of the chairman of the council and the president of

[225] Amla Sec 3.14 (1)–Chairman;The President shall preside at all meetings of the Majlis. Sub sec. (2) In the absence of the President, the Majlis may elect any other member to act as Chairman. Notice that the President is also the Chairman of the Muis Council.

Muis.[226] Having a separate official in this important position will strengthen the governance issues in all decisions undertaken by the Muis Council which is an independent body which decides many matters relating to all the affairs of the Muslims community including the affairs of the *waqf*. However, while the provision has been drafted, it has not been implemented as time is needed to select the leadership. The Muis council meets every 2 months. All statutory reports are presented at the council meeting. In the case of *waqf* updates on development, purchase and disposals of assets are tabled out for approval at the Muis council which is updated by the directorate. The Muis council are being updated by Directorate on all development of the functions and activities carried out by Muis. The Muis council comprises of representatives from the leaders of the Muslim organisations in Singapore as well as representatives of the Muslim community in Singapore. [227]

ii) Audit Committee

The audit committee was created in 2006, as an independent body, tasked to check on the finances, processes and oversight of financial reporting and disclosure. However the audit committee was disbanded and instead a value for money audit was created to look at all purchases and investments of Muis assets.

iii) Audit of Muis Accounts

All *waqf* accounts are audited. Under section 73 of the AMLA it is mandatory for *waqf* to be audited. As reported in the financial year 2008, all *waqf* accounts are audited and consolidated. In Malaysia, they are still carrying out survey to ascertain the number and size of the *awqaf* assets in Malaysia. Currently there is an incomplete record of all *waqf* in Malaysia. This problem is also faced in many other Muslims country. For example, in Iran, the researcher mentioned that he has to do his own estimation of a particular *waqf* land to ascertain the area and size of the *waqf*.

iv) Other national and international certification

Muis constantly strives to improve its processes , delivery and accountability to the public. In order to do this Muis has embarked on two of the following recognition.

- ISO 9001

  The *Waqf* administration and management have received ISO 9001 certified since 2004.

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[226] Based on interview of Muis officials.
[227] Amla Sec.3.7 list out the composition of the board members.

- Singapore Quality Class, Singapore Class and Peoples Developer

Muis is fortunate to ledge to the government continuous improvement programme to achieve the mark of excellence in its services to the community. The rigorous certification process of this programme shows Muis' commitment to give the best service to the public in all its function and *waqf* is part of these functions.

Interviewee 3 mentioned that there are adequate transparencies as there is an audited accounts and annual stakeholders meeting which Muis organises. In this respect the audited accounts which are posted on the website and the stakeholders meeting are held so that whatever grievances or inputs for improvement on the system can be air out during the meeting.

Interviewee 6 mentioned the creation of a disbursement committee which has further strengthened the transparencies criteria for the *waqf* disbursement functions. Interviewee 8, mentioned that they are working towards further transparency by getting the beneficiaries' feedback on the work done on *waqf*. Muis has established a disbursement committee to ensure that any disbursement decision is done at an arm's length and the beneficiaries understand that the terms of the will mean there is little arbitrary decision-making that can happen. However, areas where the beneficiaries are, example, general charities, are where the decisions of the committee are important to show transparency and independence in the decision-making process and identify what is allocated to each institution.

6.3.2 Excellence legal framework

Discussion on the legal framework should be considered along with Table 6.14, focused coding 3 for question 1, AMLA and the whole of the Singapore legal framework system as these forms the basis for any *waqf* legislation. For the recent amendment to AMLA, the Attorney General Chambers (AGC) are involved in facilitating the changes made to AMLA. Inputs are given by Muis officers and the proposed changes are tabled at the parent ministry with the minister's input and later forwarded to the Muis Council for approval. The mechanism of effecting change in the legislation is very efficient. However, there is limited knowledge of making changes for a *waqf* as there is no in-house legal officer who is looking at its legislation needs. Again, with limited manpower working on *waqf* matters any legislation changes needs a longer period to become effective. The last changes were made to *waqf* law, were quite substantial, and was carried out in 2000. Based on the date of this enactment, AMLA has gone through only five amendments over a forty-two year period.[228] The fact that the time taken to effect any law change can be lengthy, has also affected the way people think about making changes to the law. That is why when the interviewees were asked whether there is a need to have a full-blown change in *waqf* legislation, negative responses were dominated. Even the senior lawyer who has worked on many *waqf* matters thinks that it will not be beneficial to introduce a comprehensive piece of legislation as it could stifle the operation of *waqf* further knowing that any changes needed would take a long time to be effected.

However, the legal system which the *waqf* operates in is greatly applauded. The case relating to the LS investments Pte Ltd vs Majlis Ugama Islam Singapura[1998] 3 SLR 754 is an example of how Muis is able to stop the trustee from selling the *waqf* properties. In this case the properties at Temple Street were sold in 1993. Muis then lodged a caveat against the properties a few days later after the sale has been completed claiming that they were part of a *waqf*. The court held that the properties were subject to a valid *waqf* and the trustees had no right to sell them off as they has been vested in the Majlis by Section 59 of the AMLA(Namazie, 2008: 82). The properties were therefore reinstated as a *waqf*.

There are limited legal clauses in AMLA on *waqf* in contrast to the *waqf* acts of India, and other countries where the creation of a *waqf* is specifically defined. However, in the case of Muis, a broad definition has been taken and any additional administrative or operational matters in *awqaf* can be created through changes or additions made in the Rules, instead of the main Act. This is more advisable as the Rules are easily created and changed as they need only the Minister to approve the changes whereas changes effected in the AMLA need to go through the parliamentary system which, as mentioned earlier, will take a longer time to be effected.

However, during the interviews, one of the interviewees mentioned that due to the robust legal framework that Singapore has developed, it is very conducive for a comprehensive dedicated *waqf* law to be created and this can lead to the creation of more *awqaf* being established in Singapore. Many philanthropists who want to create a *waqf* have first to examine the existing legal environment so that they can be

[228] Amendment to the AMLA was made in year 1973, 1975,1984,1990,1999, accessed through http://statutes.agc.gov.sg/ on 1 June 2009

confident that their assets are professionally managed and the interests of the trust will be protected. So in this respect, to take a step forward and create new waqf legislation may entice more philanthropists to set their *waqf* in Singapore, knowing that their interests will be protected and there are transparent and efficient systems in place.

In discussing the *shari'ah* issues another attempt was made to identify any gaps and improvements needed to the legal framework. These can be seen in Table 6.15 under the *shari'ah* theme on the need for a separate piece of legislation.

Table 6.15: Answers to Questions 1 (*Shari'ah* issues)

AMLA has limited jurisdiction on *Waqf*, is there a need to have a full-blown enactment on AMLA?	
Yes	No
30% (3 out of 10)	70% (7 out of 10)- only related sections need amendments

There is limited jurisdiction of *waqf* in AMLA. In understanding the issue further, the experience of other countries can be considered. Table 6.16 provides some of the acts of *waqf* that are available worldwide on *waqf* matters and operations.[229]

Table 6.16: Some foreign legislation on *waqf*

S/n	*Waqf* law/ regulations	Country
1	Enactment undang-undang *waqf* dan harta pusaka orang Islam.	Selangor , Malaysia Penang, Malaysia
2	Administration of MUIS Law Act (AMLA) Sec 56-79 (Provision for *waqf*)	Singapore
3	Undang-undang *waqf* di Indonesia	Indonesia
4	Mussalman *waqf* validating act,	Pakistan
5	India *waqf* Act -1990	India
6	Regulation of *Waqf*	Kuwait
7	Bangladesh *waqf* law	Bangladesh
8	Sudan *waqf* law	Sudan

Many other Muslim minority countries do not have any law on *waqf*. They will have to fall back on existing trust law or other charitable law in the country concerned. For example in South Africa, a *waqf* institution is a charitable body. Hence it has to abide by the charity act existing in the country. As a result, there are

[229] These are just some lists that are used by the researcher to compare the various waqf law available in the world. It is not a complete list of the available waqf law in the world.

no specific laws or guidelines on *waqf*. Hence the question is whether it is necessary to have a comprehensive, holistic *waqf* law in Singapore or whether the current available provisions are adequate to administer *waqf*. In the interviews conducted with about 10 people, mostly with legal backgrounds and familiarity with *waqf* provisions in AMLA, only 3 of them thought that there is a need for a full-blown *waqf* law to be created, the other 70% felt otherwise. Those who said that there is no need for special legislation said their reason was that *waqf* is a kind of donation, and there should not be unnecessary law to stifle the growth of the *waqf*. Most of them cited that having specific legislation would not facilitate but stifle the development of *waqf*. Even the lawyer who has acted on many of our *waqf* cases has the same view. Only certain areas need improvement in terms of safeguarding the assets of the *waqf*, improving on them, adding to them, or creating more robust provisions.

In contrast, the other three interviewees who think that a *waqf* should have its own full -fledged *waqf* provision believe that, as in trust law, a *waqf* should also have its own legal requirements. As a *waqf* can involve huge assets, a detailed provision as to the usage, application and protection for the creator of the *waqif* and the beneficiaries is needed. This will ensure that whoever created a *waqf* in Singapore, there is adequate legal provision to protect him/her. Having this assurance will further enhance the creation of *waqf* in Singapore.

In further discussing this, one of the interviewees a legal professor, mentioned that with its reputation of having a strong and efficient judiciary system and a strong corporate governance environment, Singapore has an edge and is poised to position *waqf* as a philanthropic tool for Muslims all over the world to create their *waqf* there. There are many talks about creating a *halal* hub, an Islamic financial hub. Hence *waqf* can be one of the growing needs of the bourgeois Muslim who is looking for an efficient place and environment to create his/her *waqf* and is at peace and ease not only that the fund will be efficiently managed, but have the added assurance that the beneficiaries will receive the fund as stipulated in the will. The concept of *waqf* that it should be in perpetuity has this sort of mathematical equation where as long as your beneficiaries' needs are met, your charity is in automatic mode and hence you will get the reward in the hereafter for your deeds. This reciprocal effect has made one think that in order to accumulate as many reward points in the hereafter as possible, not only should the assets be substantial but also sustainable. In this regard, although the desire to have a full-fledged *waqf* is quite low, the justification for their future growth is extremely strong in order to accommodate the many needs of the *waqf* to protect the interests of the *waqif* itself, the beneficiaries, the trustees and those involved in administering the *waqf* assets.

Interviewee 13, however, responded that there is already the Trustees Act in place in Singapore, so she does not see the need to duplicate the *waqf* act. Her suggestion is to peruse the Trustee Act instead and recommend appropriate amendment to fulfil *waqf* requirements. The advantage of doing this is that there is an existing act which is already in place and can be easily amended. This can be done if the Trustees Act is willing to put in its legislation the component of the *Waqf* Act where there are fundamental differences as discussed in Chapter 3. Ahmed discussed in its unpublished research how the growth of *awqaf* will be affected based on the legal environment in which it functions (2007). It would be better if there were separate jurisdiction for *waqf* just as there is separate jurisdiction for *faraid* law and matrimonial law. The Islamic banking and finance law on the other hand is incorporated in the existing banking and finance law in Singapore. This is due to the fact that Islamic finance and banking is still at an infant stage in Singapore, so the regulatory framework must be flexible enough to be responsive and relevant to fit into the dynamics of this industry. Furthermore the risk involved in an Islamic banks are similar to the conventional banks except for the unique *shari'ah* compliance risks[230] (Jiun & Yining, 2008 Dec: 3).

The same response was received from the *shari'ah* scholars over the question of whether there is a need to have separate *shari'ah* rulings for *waqf* in AMLA. Only two out of 5 said there is a need, one of whom cited there may be a need while another said there is a definite need. Those who are against the need for separate provision cited as their reason that it may stifle the development of the *waqf*; that it would be very worrying if there were too many *shari'ah* issues being incorporated then the *waqf* may become too restricted. One of the interviewees wanted more ijtihad in such cases to prevent over-restriction. In cases of *shari'ah* where there is no

[230] Justification not to have a separate law is written by MAS staff paper. The paper discuss that Islamic bank faces the same risks as conventional banks and the only unique difference is that the Islamic bank face is the *Shari'ah*h compliance risk. 'Therefore Singapore has chosen not to put in place a separate regulatory framework for Islamic banking. Their approach is to asses each of these products and see the economic substance and risk involved and use that as the basis of assessment'. Jiun, Chia Der, & Yining,Wang. (2008 Dec). *Risks and Regualtion of Islamic Banks: A Perspective from a Non-Islamic jurisdiction*. Retrieved. from http://www.mas.gov.sg/resource/publications/staff_papers/.p. 3

clear injunction that a particular act is *haram* or *halal*, then this argument should be upheld. However, in *waqf* there are many different scenarios. They must be treated on a case to case basis and to have a black and white *shari'ah* imposed on the waqf may not seem useful. Currently, most of the *shari'ah* issues are based on the issuance of a fatwa. In the case of *istibdal*, the fatwa has allowed for *istibdal* to be carried out with conditions. Hence this has now become the de-facto law to allow for the transfer or sale of assets for the *waqf*. However, the interviewee who said that there should be separate *shari'ah* law, also said that having such law would ensure transparency in the rulings, whereas currently matters have to be tabled out at the fatwa committee which looks at each *waqf* on a case-to-case basis. Such processes may result in inconsistencies in the manner that fatwas are being handled. Since there is no legal provision that the *waqf* can be sold through the process of *istibdal*, the lawyers have been very cautious and would insist on the issuance of a *fatwa* before any sales of *waqf* properties. This is to ensure that due diligence is carried out. This this goes to show that such provision should be created in AMLA.

Ahmed (2007: 2) stated that one of the major impediments in the *awqaf* sector is the discriminatory legal treatment of *awqaf* compared to other non-profit sectors, and *waqf* law is more restrictive in nature. In his concluding remarks, he expressed the need for legal scholars, jurists and lawmakers to create details of an efficient and flexible body of *awqaf* law to fulfil the specific needs of the different countries in which the *awqaf* are operating as this will have implications on the development of *awqaf* in those countries (Ahmed,2007:41).

6.3.3 Progressive *fatwa* and *shari'ah* interpretation

Table 6.17, shows the fourth focus coding for factors that can contribute to the successful management, administration and development of *waqf* assets.

Table 6.17: Focus coding number 4 for Question 1 (*shari'ah*)

Progressive fatwa and *shari'ah* interpretations	
Interviewee 1	We have very progressive and dynamic fatwa
Interviewee 2	Very good fatwa framework however more needs to be done on the fatwa system
Interviewee 3	Good fatwa members
Interviewee 4	We have capable and able members in the fatwa committee and we have our methodology used in the *shari'ah* interpretation.
Interviewee 5	Good fatwa members a mix of the old and the younger generation

Interviewee 6	Good fatwa framework but need to be more bold and should not be afraid to deviate from the traditional views.
Interviewee 8	We do not have a fatwa member knowledgeable on Islamic finance issues.
Interviewee 9	Improvement needed on the fatwa system, but views are progressive
Interviewee 17	We have good fatwa framework

The following section discusses in detail about the issues raised in the above table.

6.3.3.1 Progressive *fatwa*

A fatwa based on a legal definition is an 'explanation of a legal ruling by a Mufti on an issue relating to religion based on inferences from the Islamic jurisprudence in answer to an enquiry'[231]. However a fatwa is not binding in a court of law. Nevertheless, it is an important source of rulings in Islam and the judges in Singapore will usually use a fatwa as a basis for its decision pertaining to any rulings involving Islamic matters.

Most of the interviewees agree that Singapore has effective fatwa members on the fatwa council. But the system has room for improvement. For example, interviewee 9 mentioned that there is a need to improve the system. This is because fatwa procedures should have a system like a normal legal system such as proper recording and indexing of all *fatawas* and these *fatawas* should be viewable on line. However, Muis has issued a compilation of the fatwa which are now accessible on line. On the capabilities of the fatwa members, all the interviewees agreed that the members are capable. However interviewee 8 thinks that there is as yet no expert on the Islamic finance areas. Since Singapore is still inexperienced in Islamic finance, this matter has not yet been seriously looked into.

[231] The literal meaning of the fatwa is to provide solutions/explanation for an issue relating to religion. The scope and process of a fatwa ruling in Singapore can be found in the Muis website at http://www.muis.gov.sg

6.3.4 Easy access to *shari'ah* compliant financing

Table 6.18: Focus coding number 5 for Question 1 (*shari'ah*)

Easy access to *shari'ah*'ah compliant financing	
Interviewee 1	No problem with financing, even conventional financing
Interviewee 3	Do not expose to debt financing. Use external financing and transfer risk of financing to other parties, may want to have investors invest in the *waqf* properties as a partnership instead of debt.
Interviewee 6	Internal financing and raise fund with the tenant
Interviewee 7	Raise financing through the public such as REITs thereby creating new form of *waqf* financing model which is *shari'ah* compliant
Interviewee 9	Partnership or joint venture with other parties
Interviewee 10	Muis is averse to taking financing. As a statutory board easy access to cheap financing. However for *shari'ah* compliant financing may need to seek through the bank which offered *shari'ah* compliant financing.
Interviewee 11	Raise financing through public.
Interviewee 19	Various forms of financing through the public, less burden on Muis.
Interviewee 22	Cheap and *shari'ah* compliant financing.
Interviewee 25	Need to have easy access to *shari'ah* compliant financing

The other important issue that was raised for the successful management of *waqf* assets is easy access to *shari'ah* compliant financing, as depicted in Table 6.18. In the earlier discussions it was mentioned that inter alia one of the significant ways of increasing and expanding the assets of a *waqf* is through development. To create development, financing is the most important aspect, and *shari'ah* compliant financing becomes more desirable as it is the *waqf* assets that need to be developed. There are few issues raised in respect of financing. It is not just *shari'ah* compliant financing that is critical. Risk and the burden of too much debt has also been mentioned earlier in this thesis. For example, interviewee 3 mentioned that we should not expose ourselves to too much debt. He has proposed that a better solution to the financing needs is to have a partnership system. This will then reduce the burden of debt on the *waqf*. However, it will also mean that the equity portion will also be reduced as a result of a partnership or joint-venture project. Many have advocated the raising of funds through the public as well as reducing the burden of debt and risk on the *waqf* and Muis as a whole. Interviewee 1 does not mind conventional financing as long as it is value for money for the *waqf*. The argument for this is that the presence of an Islamic finance industry in Singapore is still very small and controversy over the possibility and permissibility of interest remains.[232] (Saleem, 2006).

Some of the issues raised in the interviews are discussed in detail in the following sections:

i) Raising of funds through the public

Most of the interviewees suggested the raising of funds through the public. The purpose is not to incur debt for the *waqf*. At present the total debt portfolio for all awqaf in Singapore is SGD$17,152,143[233]. This represents only a debt (borrowing) to equity ratio of 0.05[234](Investopedia, 2009). The highest debt incurred by a single *waqf*, which is *waqf* Jamae, was SGD$10 million in 1985 to develop its shop-houses. The borrowings were totally funded by *Bait-ul-mal*. The *waqf* has taken more than 15 years to pay off its debt. The debt is fully paid in 2010.[235] Since the *waqf* has no initial income, it has totally relied on 100% of borrowings. This has somehow put undue pressure to the *waqf*. Hence in such a scenario, it will unnecessary put extra pressure on the *waqf* to repay its debt. The decision then to go ahead with a 100% borrowing was because there were few other options for the waqf, as the location did not permit the whole plot to be used so that maximum returns can be received. In the later cases some of the *waqf* developments have then resorted to selling off the properties on 99-year leases instead. This has involved either the selling of the entire property or part of it. The example of the YAL SAIF Charity Trust *waqf* is that it has partially sold off some of the development. Out of the total 33 units, only 2 units have been retained under the *waqf* to generate rental income. The rest of the units were sold on a 99- year lease basis. The selling of the units over 99 years has enabled the *waqf* to avoid debt; it has managed not to show any borrowings in its balance sheet. It has also managed to give a higher return, about a three-fold increase to its

[232] Some have adopted the view of a jurist which was famously quoted by Sheikh Tantawi that interest is not the same as usury and that some form of interest is permissible. Another author says that usury and not interest is not permissible is Dr. Muhammad Saleem who argued that what is not allowed in the Quran is usury and not interest ; Saleem, Muhammad. (2006). *Islamic Banking: A Charade*: Book Surge LLC

[233] The figure is extracted from Muis 2007 annual report. It is based on the classification of borrowings. Please take note that the figures do not include those *waqf* whose accounts are not consolidated in the annual report. There are 24 such waqf, therefore only 75 waqfs are reported in the annual report.

[234] The figure is derived by dividing total borrowings of $17,152,143 over total equity;$340,972,671 which gives a ratio of 0.05. The debt to equity ratio shows the proportion of debt or equity used to finance its assets. Definition and formulas can be viewed at http://www.investopedia.com/terms/d/debtequityratio.asp.

[235] Based on MUIS FY 2009 Annual Report

beneficiaries, compared to before its development.[236] Such financing can only be undertaken if the *waqf* has large enough assets to be developed. The fact that *istibdal* has been allowed in many of the cases has also somewhat eased the *waqf* of taking in debt. The *waqf* can sell off the property and buy an alternative one. However, this can only be undertaken if there is development potential for the existing *waqf* and it will benefit the *waqf* to have it developed. If there is no development potential then other alternative investment options need to be taken.

ii) Through issuance of *Sukuk*

The raising of funds through the sukuk issuance which was done in 2000 is one such example. However, again in this example, the *waqf* is not responsible for the obligations of the *sukuk* payment. This has been undertaken by *Bait-ul-mal* which is the Muis General Endowment Fund. Hence the risk of non-payment has been transferred to *Bait-ul-mal*.[237] While the *sukuk* is called musharakah, it is only a musharakah on the first level transaction. The second level transaction is more of an ijarah *sukuk*. This is because the profit distribution has been allocated and *Bait-ul-mal* will undertake to pay off the loan. For the *waqf* there is no liability or need to repay the loan as there is no contractual obligation for the *waqf* on the bondholders. Hence, the *waqf* in this case is also protected from any claims on default. This is possible as Muis is the entity which oversees the fund. It would be a different scenario if a totally different entity had entered into this transaction. Such a negotiation for the profit distribution and liability incurred might not favour the *waqf* totally. Again, this raising of the sukuk for the *waqf* has shown that the *waqf* is still insulated from exposure to debt.

iii) Partnership or joint-venture

A partnership or joint-venture project can be undertaken by waqf administrator with a lessee. A joint-venture project has also been undertaken through the *waqf* of Raja Siti Kra-eng Chanda Pulih where a row of shop-houses was being developed by Warees and Warees also undertake to be the head lessee for the entire lease of the

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[236] Return before the development for waqf YAL Saif Charity trust was about $140,000, currently based on the FY2007 income extracted from Muis annual report reflect an income of SGD$489,000. Hence this represents an estimated three- fold increase in the income.

[237] Based on the Musyarakah Joint Venture agreement dated Oct 2002 of which the extract is as follows; "the Apartments with Services shall be held by MUIS as beneficial owner (in consideration for which MUIS shall be liable to pay the investors in the Musharaka Bonds (as defined below) ("**Bond Investors**" or "**Bondholders**") the amount of S$35,000,000 on the Bond Expiry Date".

shop-houses. This arrangement has made the development of the *waqf* possible by it not having to raise any financing as the financing in this case is undertaken by Warees Investments Pte Ltd. In return Warees received a discounted rent and the *waqf* received a higher rent than before development and an increase in the value of its property as the premises have now been developed and renovated. This arrangement has been a popular choice for the *waqf* as during the interviews it was discovered that there is still fear of *awqaf* being exposed to debt. While this ensures a risk-free approach to development, the multiplier effect of the *waqf* being redeveloped will be circumvented. *Awqaf* which have high commercial value should go ahead with redevelopment and the administrators must be willing to take the financial risks. The financial model of the *waqf* to depend on the financial backing and security of MUIS-*Bait-ul-mal* may not sustain. This is because *Bait-ul-mal* will also have to be wary of the kind of debt exposure and ratio that it has assumed for the *waqf*. Hence it is interesting to see how a *waqf* on its own is able to raise its own funds. To raise funds via the Muis channel will also entail a longer process and red tape due to the governmental set-up under which Muis is structured. Interviewee 8 rightly mentioned that there is a lot of process and procedure in raising finance, as there are many layers to go through before finally getting the approval from the necessary authorities.

With the recent financial crisis commencing in 2007, the credit crunch problem has seen banks having trouble to extend credit. Gargantuan banks like Citicorp had to be rescued by the government and is currently under the TARP rescue programme [238]. This wariness on debt can be further accentuated by the recent development of General Motors filing for bankruptcy on the 1st of June 2009. The iconic company for the Americans finally had to be closed after succumbing to US$173billions of debt. This has led to the tightening of the financial regulations and possibly more disclosure in the accounts to ensure that companies and entities are aware of the risk exposure that they are in.

[238] The Troubled Asset Relief Program or TARP is the US Government initiative to rescue troubled bank which faces the 2007 financial crisis. The US Treasury department invested US$125 billion of taxpayers fund in 9 major banks. As at 28 Oct 2008, Citigroup capital purchase program amounted to USD$25billion. Source: Federal Budget Nov 19. 2008. Accessed through; http://perotcharts.com/2008//11/tarp on 12 April 2010.

6.4 Conclusion

In concluding, from the interviews carried out, the following themes are derived from the administration and management of *waqf*.

Factors that contribute to the successful management of *waqf* assets must have the elements of innovation and creativity and involve highly talented, passionate people with strong leadership qualities, great vision and a realistic attitude towards risk. In addition, a robust legal framework with progressive fatwa and easy access to finance is a pre-requisite in managing *waqf* assets.

A major challenge faced in the management and development of *awqaf* is the lack of trust and vision by the people involved in its management. This has led to the inertia in creativity and innovation. As a result there is a dearth of new *waqf* being created, and a difficulty in getting *shari'ah* compliant financing. Coupled with this are uncooperative trustees who further can impede progress.

The coded answers and themes from the interviews go to show the factors which are essential in the successful management of *waqf* assets in the Singapore context. These are broad factors which have been singled out and discussed in great length in this chapter. Among the examples cited is asset migration exercise (*istibdal*) using long lease tools, acquisition of assets locally and globally, injection of new funds and creating new models of waqf development.

Although highly innovative initiatives in the development of *waqf* are needed, these are achievable. There are many examples of property companies innovating the manner in which properties can be managed. However the most important, the unique feature of *waqf* assets is to be able to create a legislative framework with progressive fatwa issues relating to the *waqf* so that there is not only provision for the religious requirement but the capacity for growth in *awqaf* assets and development. The most challenging task in any organisation is to appoint staff at all levels in the organisation who are suitably skilled and motivated to manage the *waqf* effectively. With the current set up it is clear from the interview undertaken that the expansion of *waqf* is still being limited by the inability of the organisation to invest in its manpower requirement and to expand its scope to grow the *waqf* industry further.

In many other countries there are many other obstacles that need to be resolved. However, in Singapore these obstacles are more easily managed. Take for example the *fatwa* issues in relation to *waqf*. Considerable *waqf* development can be undertaken because of the progressive fatwa and this has facilitated the way in which the *waqf* management can be undertaken. *Waqf* operates in a first-class government infrastructure, with strong legal backing and a world-class management system which operates as a subset of the government system in which *waqf* operates. This advantage has led *waqf* management in Singapore to edge towards a superior management and administration system, which is the hall-mark of the civil service in Singapore.[239] Though these are inherent strengths, the interviews revealed that there seem to be problems of attitude towards risk when it comes to decision-making in progressing *waqf* to the next level. Why is this so? Could it be the bureaucratic nature of working in a government department where certain regulations and norms are required, or the restrictive *shari'ah* requirements?

However, there is a need to look further as to how *waqf* should be structured so that the problem of perceived risk and investment and financing decisions undertaken for an endowment where capital preservation is as important as income generation can be overcome. This will lead the researcher to the next chapter to analyse the investment strategies used for the management of *awqaf* assets.

[239] Singapore has held the top position for the last 4 years for the easiest place to do business. This was ranked by the World Bank on the 8th sep 2009 reported by Reuters, Wednesday Sep 9, 2009. Accessed through http://sg.news.yahoo.com/trrs/20090909/tap-ifc-asia on 9/9/2009.

Chapter 7: Investments and Financing Issues of *Waqf* Assets

7.1 Introduction

Financing and investments are an integral part in enhancing the development of *waqf* assets. While there are restriction on the manner in which the *waqf* should be managed and developed there is no reason why the *waqf* should receive inferior returns compared to the conventional managed endowments such as 'trusts' or the 'foundations'. It is well known that the Harvard Endowment for example brags a double-digit annual return for the past 10 years prior to the financial crisis in 2007.[240] Hence, it is important to understand how and in what framework *waqf* assets are managed and how they are structured. Therefore this chapter attempts to seek the investment framework, objectives and strategies in managing *waqf* assets.

The second part of the chapter delves into a possible alternative in an unconventional way of managing *waqf* assets through the instrument of REITs. It is with these findings and analysis that it is hoped to expand the current limited instruments used in the development of *waqf* assets. Only findings on the structuring of REITs will be analysed and discussed in this chapter. In Chapter 3, a case study approach to the various types of financing used for *waqf* development was presented and discussed. Hence these issues will not be repeated here. However, the issues will be presented in Chapter 8 where there will be several recommendations.

7.2 Permanent and perpetuity features in *waqf*

Before the discussion commences on the investment objectives and strategies and the possible financial and investment structuring of *waqf* assets, it is important to present the analysis and results of the interviews on the perpetuity and permanency issues of *waqf*. Although in Chapter two these *shari'ah* issues were discussed it will be useful to bring in the analysis here to address the perpetuity and permanency issues again as this will have implications on the ability to involve the different kinds of

[240] "The Harvard Management Company provides a world-class investment management for Harvard University and is focused solely on generating strong investment results to support the educational and research mission of the University." They use a hybrid model, a mix of internal and external management teams. A complete information of the Harvard endowment model can be found through the website: http://www.hmc.harvard.edu/about_hmc/. Accessed on 11 Dec 2009.

asset classes which will be discussed later in this chapter where investment strategies are discussed.

The questions and analysis in a codified manner are illustrated in Table 7.1 and 7.1.1.

Table 7.1: Results for Question 8 (*Shari'ah*)

Question 2	Should *waqf* have permanency features?
Focused Coding	
1	*Waqf* should be permanent and perpetual
2	Need not be in perpetuity but must last more than 15 years
3	*Waqf* can be temporary
Theme	*Waqf* should be permanent and perpetual

Table 7.1.1: Focused coding Number 1 for Question 8 (*Shari'ah*)

Waqf should be permanent and perpetual	
Interviewee 4	*Waqf* should be permanent but not necessarily in perpetuity. Permanent here refers to say 15 years.
Interviewee 5	Perpetuity and permanency in *waqf* should stay to differentiate it from the other normal *sadaqah*
Interviewee 6	Must have the perpetuity and permanency characteristics
Interviewee 10	Must have the permanency status to distinguish it from the normal *sadaqah*.
Interviewee 13	*Waqf* should be perpetual but the asset need not have the permanency issues
Interviewee 15	*Waqf* should have the permanency features and the perpetuity element
Interviewee 17	*Waqf* should have its permanency status

This is a fundamental question which needs clarification as some contemporary scholars feel that such restrictions are unnecessary as *waqf* is not an obligatory act of *ibadah* as it is an *ijtihadi* law. Above are the responses from the interviewees. Many share the view that *waqf* should have permanency and perpetuity. Most of them said that the unique nature of *waqf* in having its corpus consecrated and only the revenue stream being given to charity is justification that the capital must stay as long lasting as possible. However, it is interesting to note that one interviewee distinguished between striving for perpetuity and modifying the definition of permanency for assets. While the features of *waqf* should be permanent, the assets may not necessarily be so. This is because in a cash *waqf* the assets can change forms. What is permanent is the value of the capital consecrated to the *waqf*. Therefore, if the capital of the *waqf* upon inception was $5 million it should maintain its value at $5 million. However property valuation is volatile. There are instances where this can be reflected in a diminution in the value of the property, for example in the case of *waqf* Bencoolen, where an amount of SGD1.3 million was recorded as a loss on a fair value of the property for the FY 2008 *waqf* accounts. Although this was just a book value, it went to show that property values can rise and fall. [241] The valuation will affect the pricing of a particular *waqf* 's assets, which may in future be important in determining the market value of the *waqf*; more so when it is structured as a REITs or share in a company. Currently the fatwa position in Singapore is that having a limited period specified in the creation of *waqf* will render the *waqf* invalid.[242] This position is contrary to the International Council of Fiqh Academy(the council) where they allow for temporary endowment or endowment subject to time period.[243]

Table 7.1.2 Focused coding Number 2 for Question 8 (*Shari'ah* Issues)

Need not be in perpetuity but must be more than 15 years	
Interviewee 4	*Waqf* should be permanent but the issue is how long? May be more than 15 years.

Interviewee 4, on the other hand, questioned the concept of permanency by asking what is permanent? Do you define permanent as the useful life of the assets, or is there a guideline that sets the minimum number of years that the *waqf* must fulfil? He suggested that as in the case of a trust, it can be created for say a minimum period of 15 years. This view is currently not supported by the fatwa committee, as there are several such cases that are not recognised as *awqaf.*

In the case of several *awqaf* the fatwa committee's opinion is that if a testator specified in the will a time-frame, then those particular assets or properties are not *waqf*. In a cited example a fatwa was issued for the will of Shariffah Allowea Binte Syed Aboo Bakar Bin Omar Aljunied of which the properties are situated at nos.1,2,3 and 4 Madrasah Lane, concerning the status of the assets and whether the will contained the elements of a *waqf*. The objectives of the trust as extracted from the will were as follows:

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[241] Figure extracted from Muis Wakaf Financial Report for FY 2008.
[242] Muis Fatwa committee meeting dated 6 Sep 2000.
[243] Decision no.181 (19/7) regarding endowing shares,sukuk, material rights and benefits. Meeting of the International Council of Fiqh Academy in its 19th session held in Sharjah, UAE dated 26-30 April 2009.

"Upon trust the life of the longest survivor of the Settlor and the persons 23 in number whose names are set out in the second schedule hereto and for 21 years after the death of the said last survivor to expend the net income as follows:

i) To pay the settlor during her life.

ii) To pay the settlor maidservants S$10 per month

iii) To pay S$120 for poor and needy

iv) To pay to such person for daily reading of Qur'an on the settlor's grave

The fatwa committee in their letter dated 6 September 2000 made a ruling that the abovementioned trust is not a *waqf* because the will specified a limited time period for the charity to last[244](F. C. Muis, 2000). Therefore the fatwa refutes that the onus is on the descendants to perform the deeds as required by the testator. The following is an excerpt from the fatwa committee's ruling:

> *"JawatankuasaFatwa berpendapat pada dasarnya perwakafan serupa ini adalah tidak sah kerana ia tidak muabbad(berkekalan) dan memutuskan berdasarkan "sighah" (lafaz) pada wasiat tersebut, iainya tidak diakui sebagai wakaf kerana ada bersyarat had masa sedangkan tujuan wakaf adalah berkekalan tanpa had masa*."[245](Muis Fatwa Committe,6 Sep 2000)

Translated as ;

> *"The Fatwa Committee is of the opinion that in general, such a waqf is not valid because it is not muabbad (*perpetual*) and concludes that based on the 'sighah' (pronouncement) on the said will, it is not recognized as a waqf because there is a condition on the time limit, whereas, the intention of a waqf is for perpetuity without any time limit.*"(Muis, Fatwa Committee, 6 Sep 2000)

In the *waqf* enactment for the Selangor state in Malaysia, permanency is not a criteria. In Malaysia the types of *waqf* are classified into three categories of which one is *waqf muabbad* which means a *waqf* which is perpetual, hence it is possible to *waqf*

[244] A letter by the fatwa committee on the ruling was issued on 6 September 2000. A similar case was presented on several other waqf where the will stipulated the time period for the charity to last. The other case are the trust of S Hussain Bin Abdullah Alkaff (property at 8 Nordin Lane; by an indenture dated 31 Nov 1923 reg. In vol DC1X no.151), S Alwi Bin Abdullah Alkaff at 36 Pickering Street, by an indenture dated 29th August 1933, vol 845 no. 32) S Omar Bin Abu Bakar Al- Aidroos at no. 19 M R Chitty Road by an indenture dated 21st November 1940 reg. In vol 970 no.138 and S Omar B Abdullah Al-Zahir at no. 216 Waterloo Street by an indenture dated 5th January 1917 registered in vol CDXXXV111 no.43). This is not an exhaustive list as there are also other similar wills which were presented for fatwa on the status of waqf.

[245] This is another fatwa issued on the 13th Jun 1997 by the fatwa committee of Majlis Ugama Islam Singapura sec 32(2) , on the will of the late Haji Muhammad Hassan bin Haji Muhammad Salleh dated 18 January 1948 on the perpetuity issue.

in a category where it may not be permanent ("Enakmen Wakaf (Negeri Selangor)," 1999). However, this is not similar to the *waqf* laws in India, where there must be a permanent dedication of the properties in other words it cannot stipulate a time limit for the dedication("The Wakf Act, 1995," 1995). Singapore *waqf* laws are quite similar to the Indian *waqf* laws when it comes to the definition.

In the above cases, one of the *waqf* dedicated the earnings for 21 years after the death of the last descendants of the British king at the time of the will.[246] The trust lasted for almost 70 years. If this had been created in say Malaysia, it would constitute a *waqf* as the Malaysia Enactment on *waqf* allows for different types of *waqf* being created, it even allowed the creation of a *waqf* on a company("Enakmen Wakaf (Negeri Selangor)," 1999).[247]

However, from the interview only one person from the religious cluster is agreeable that the *waqf* need not have a perpetuity status but allow for a more flexible tenure like the trust law. This view, cannot hold as not only in the fatwa that perpetuity is a mandatory characteristic of *waqf*, a case was also brought up to court – in 1918, the court has disallowed the sale of *waqf* property to provide for the on-going expenses of the *waqf*, this is a case contested by the grandchildren of Syed Mohamed Alsagoff on the perpetuity principle and sought sales in order to provide for running expenses [SSLR, 1918].

Perpetuity is another very interesting area. Fatwa and past court cases have shown that this feature is one that distinguishes it from the general *sadaqah* (donation). Hence, any court case or fatwa opinion where the validity of a *waqf* is being challenged, this is the feature which determines the status of the *waqf* of which cases are highlighted in this chapter. While legally under the definition of *waqf* in the AMLA, permanent dedication can reside in the intention of the *waqif*. Therefore, permanent dedication may not necessarily equate to perpetual asset. This argument also holds true for Imam Maliki and Shafie *madzhabs* which allow temporary *waqf*.[248]

[246] This deed of settlement of Haji Bidin Bin Abdul Ghani's property at 94, Arab Street formerly known as 155 Arab Street, Singapore, was sold by the trustee in 1991. According to the deeds the reigning king at the point of creating the will in 1924 was King George V. His last surviving descendants is King Edward V111, Windsor who died in 1972. Calculating his death after 21 years will takes us to the year 1993 after which the property should have been sold. In all, the properties have been used for charitable purposes for almost 70 years.

[247] See footnote 218.

[248] See chapter 2 for detail argument on this. See also footnote 218 for *waqf* on shares in a company.

For the recent decree made by the Council of Fiqh Academy, it allows for more flexibility in the definition of waqf to even include temporary waqf.[249]

7.3 The *waqf* investments committee

Table 7.2: Results for Question 1 (investments of *waqf* assets)

Question 1	Are there any investment committees established for the investment of *waqf* ?

The answer to the question in Table 7.2 is 'Yes' and 'No' answers. The establishment of an investment committee goes to show the existing framework or premises that set the investments objectives. Out of the 8 respondents, only one thought that there was such a thing as an investment committee. Upon investigation it was found that while there used to be *waqf* committees, currently there are none except for one committee which discusses the disbursement of *waqf* income. However, the investments of *waqf* assets are being regulated by the Finance Strategic Unit in Muis. There is a director overseeing this function. All matters related to investment decisions will go through the same approval process as any other financial, matters on Muis assets. Placement of the surplus cash funds of *waqf* assets is being done at the Finance SU level. However, where movement of assets such as sales of *waqf* properties and proceeds to be channelled to other forms of assets are concerned or even development decisions, these are done with extra care and scrutiny and are presented to the Warees board, the Muis council and where necessary to ministry level depending on the financial size of the investment.[250]

BMT have their own in-house investment team, as they are a listed trust company. According to them, they have meetings with the co-trustees to discuss the performance of their investments on a quarterly basis. As for the *awqaf* which are currently managed by private trustees who often is an individual with 2 or 3 trustees from the testator's family they will need to seek Muis approval for any investment according to the approval limits set.

In the case of the trust company, they do have an investment committee but they do have frequent meetings with their client. As quoted by one of the fund managers "*We do regular meeting to update on the performance of the securities".*

[249] See footnote 242.
[250] See diagram 4.1 in Chapter 4.

There is also an investment guideline. However, this has not been officially documented. Only key performance indicators are stated in the Muis official 3- year master-plan. However, detailed investment guidelines are not listed for Muis assets and different funds have different criteria for investment. In the case of *waqf*, each *waqf* also has different criteria for its investment. This can be seen by the fact that the *waqf* of MSE Angullia allows a certain percentage of its portfolio in stocks and shares.[251] While many of the *waqf* deeds do not mention any criteria for their investments and many of their assets are virtually all property based, nevertheless it is important to have an investment guideline for each *waqf* or an investment guideline for *awqaf* as a whole.

As a comparison, KAPF set up four standing committees of which the first three are related to the investment and development of their *waqf* assets. These are the *Shari'ah* Committee, the Committee for Developing and Investing *Waqf* Resources, the Committee of Real Estate Property Investment and the Committee of *Waqf* projects((KAPF), 2004: 3). Therefore it is imperative that Muis establishes an investment committee to provide the needed strategies and governance for the investments of its *waqf* assets.

7.4 Strategies and investment objectives of *awqaf*

The questions then referred to the strategies and investment objectives of *waqf*. Consensus was that it should be *safe and not risky*, it must have *capital preservation* elements and be *shari'ah compliant*. Table 7.3.below illustrates the findings:

Table 7.3 Answers to Question 2 (investments of *waqf* assets).

Question 2	What are or should be the investment objectives and strategies for *waqf*?
Focused Coding	
1	Should be safe, not risky.
2	Capital preservation over income stream
3	Return above fixed deposit rate or benchmark according to market rate for rental properties.
4	Must be *shari'ah* compliant
Theme	The investment objectives and strategies for *waqf* should be safe and not risky. Should have the capital preservation elements and be *shari'ah* compliant.

[251] Waqf of MSE Angullia Clause 7,8,9 and 10

As can be seen in Table 7.3, it is clear that looking at the investment of *waqf* assets, due to the perpetual nature of a *waqf*, the assets need to have the preservation element. Interviewee 18 mentioned that "*our investment strategy is always for the long term needs of the waqf, hence this means capital preservation and not growth*". In this statement, 'to preserve' means to protect the capital of the assets. Hence capital preservation has been the hallmark of *waqf* overall investment policy. The following paragraph will discuss the elements of *waqf* investment objectives and strategies as purported by the respondents.

7.4.1 Safe and not risky

The first element is safe and not risky[252]. Safe investments are generally in lay terms investments which are capital protected and which, according to investment analysis will be based on the ratings given. For a *waqf* what is the definition of risk and how safe should the investment be? Below are the responses.

Table 7.3.1: Focus coding number 1 for Question 2 (Investments of *waqf* assets)

Should be safe, not risky.	
Interview 2	Should have low risk
Interview 7	Investment should not be speculative, low risk level, be safe and not risky.
Interview 9	Low risk
Interview 12	Depends on the requirement of the *waqif*, some allow for higher risk to fit the income stream.
Interview 14	Investment criteria depend on the mandate given by the client for their trust accounts, some require high annual income this sometimes need to be associated with high level of risk.
Interview 18	Less volatile so less risky

According to the interviewees, as can be seen in Table 7.3.1, what is meant by safe and risky is that the investment should not be speculative and should be less volatile. However two of the interviewees agree that while it should not be of high risk, it should follow the mandate of the trust which may require it to be placed in quite a risky investment since higher return on the investment is wanted. Interviewee 12 mentioned that if the trust mandate requires a return of about 10%, then it is the

[252] According to the definition in Business Dictionary.com;" Finance risk is the probability that an actual return on an investment will be lower than the expected return." There are 17 categories of financial risks listed in this dictionary from interest risks to economic risks to capital risks and etc. However, the more pertinent issues of risk here are the risks of capital erosion and income loss or lower return on the capital employed vis a vis a safe investment product such as triple-rated bonds or fixed deposits. Accessed through: http://www.businessdictionary.com on 27th Nov 2009.

duty of the fund managers to ensure that the investment portfolio matches the 10% return that is required in the mandate. Hence they will start looking for an investment which can give a 10% return; for example, fixed income securities which are able to deliver the 10% return as required.

Most of the interviewees who work for the Islamic Religious Council under a statutory board regime have a general tendency to be risk averse. Because of the public status of the entity, the threshold to go for a higher level of risk is generally not tolerated. These are public funds and hence Muis has to be trusted to ensure that the assets are being managed efficiently and prudently. With the recent financial crisis the tolerance for risk is definitely going to be lower.

7.4.1.1 Mitigating risk

During the interviews one of the fund managers for a trust company said that they have to run a credit analysis on each of the securities that they intend to purchase. This is to avoid placing a huge risk on the trust's assets. Since there is no investment guideline for a *waqf*, what are deemed to be safe will be all the fixed income instruments which guarantee the capital and the fixed periodic income. However, this bond-like structure is not *shari'ah* compliant except for the similar Islamic instrument which is *sukuk.* However, there are supply problems in buying *sukuk* in Singapore. As a result there are very limited, safe and *shari'ah* compliant product for the *waqf* apart from property investment. For Harvard University, the risk tolerance of the University is a critical factor in their asset allocation decisions and the flexibility of the investment strategies that they choose(Harvard Management, Sep 2009).

In property investment there are many types of risks. These are market risk, tenant risk, physical building and services risk, cashflow risk and interest rate risk location risks, risks of non-tenancy and building risks (KordaMentha, Jun 2005)

These lists many not be exhaustive and this research does not include defining and analysing them. However, when making a property investment decision, some of these factors will be taken into account. For example, what type of property will be suitable for the *waqf* to be developed or invested into? Should the place be turned into a boutique hotel or a retail unit? The question to look out for is not entirely based on income. However the risk elements in this case business risk need also be considered. For example, the *waqf* of Sharifah Zain Alsharoff Alsagoff used to be the landmark property called the Red House where there used to be a retail and famous bakery shop situated there. The development plan went through different proposals for development from a boutique hotel to a retail outlet and eating premises. The most important criteria for consideration are the viability of the business activity there. If demand for a boutique hotel is high and it will ensure sustainability of income for the *waqf,* then it should be considered, certainly without compromising on the *shari'ah* element of the usage. Take for example the Bencoolen project; one of the mandatory requirements which were set for the development of the service apartment was securing a guaranteed income stream for at least 10 years. This was successfully done by signing a 10-year lease contract with Ascott, a hospitality company operating in Singapore. These are examples, of risk-mitigating elements that must be observed. Risk is, therefore, top of the agenda when investing in *waqf* properties, and the *waqf* is not willing to undertake high development risks that come with trying to structure a *shari'ah*-compliant product. These may not even be on anyone's radar yet as they are complex and unknown territory as lamented by Halim, "This may explain why Islamic finance investors and financers alike are not embracing risk (2009: 14-17)". Hence, a deeper research may be needed to analyse development risks and strategies for *waqf* property.

7.4.2 Capital Preservation

Table 7.3.2 codes the responses for capital preservation.

Table 7.3.2: Focus coding number 2 for Question 2 (Investments of *waqf* assets)

Capital preservation over income stream	
Interviewee 8	Capital preservation
Interviewee 9	Capital protected investment
Interviewee 12	Capital preservation
Interviewee 14	For a trust it depends on the mandate given and some do go for income stream rather than capital appreciation
Interviewee 18	Our strategy is always looking at the long term growth of the *waqf* properties meaning capital preservation rather than growth
Interviewee 20	Capital preservation

Table 7.3.2 shows capital preservation as the most important element. Interviewee 9 mentioned that "We are usually risk-averse, so we would see capital protection as the most important criteria, less emphasised is made on the income stream". The *waqf* feature emphasised capital protection. It gives the necessary usufruct. So it is important that, capital should not be eroded. This is further

emphasised in the Originating Summon, O.S no 918 of 1994 where the trustees were given power to invest in immovable properties which must not have less than a 999-years title to the properties invested.[253] This is a permanency issue prescribed by the law. If a property were to be purchased it, the lease should not be for less than 999 years. The permanency of the property is therefore being defined here.

In preserving the capital of a *waqf*, determination of the capital is important. However, prior to 2004, the capital and accumulated funds were not distinguished. As a result the original capital was not determined. The difficulty in ascertaining the original capital of the *waqf*, necessitates changes to be made to the presentation of the accounts. The accounts now show separately the original capital and the accumulated fund. The final capital will show the volatility found in the capital. Table 7.3.2.1 depicts the separation of the original capital from the accumulated capital.

Table 7.3.2.1: Extract of the breakdown of the capital of the *Waqf* funds.

	WA/6[254] Arab St Educational Trust Fund 2008 $	**WA/6 Arab St Educational Trust Fund 2007 $**	**WA/90 Aljunied Fund 2008 $**	**WA/90 Aljunied Fund 2007 $**
Net (deficit) surplus	(451,457)	1,042,232		
Accumulated fund at beginning of year	3,422,450	485,095		
Adoption of FRS40[255]	-	1,895,123		
Accumulated fund at end of year	2,970,993	3,422,450	(8,601)	(8,899)
Capital	80,288	80,288	28,390	28,390
Fair value reserve	-	-	-	-
Asset revaluation reserve	-	-	-	-
Total fund	3,051,281	3,502,738	19,789	19,491

Source: Extracted from Muis-Waqf fund 2008 annual report

253 Waqf MSE Angullia clause 7,8, 10 also found in sec. 4 & 59 of the Trustee Act. (1985 ed cap.337)
254 This is the internal referencing done for all *waqf* file kept by the Zakat and Waqf Strategic Unit in Muis.
255 FRS 40 refers to the Singapore financial reporting standard on investment property. The standards of reporting can be accessed through http://www.asc.gov.sg/frs/attachments/2005/FRS-40.pdf. Accessed on 20 Sep 2010.

The example in 7.3.2.1 illustrates that the capital remained constant, what is fluctuating is the valuation of the assets. In the case of the WA/6 Arab St Educational Trust Fund, the net surplus of $1,042,232 was reported in 2007 out of this amount $1,000,000 was recorded as gain on fair value of property, this amount therefore showed only paper gain and not real gain. Therefore the real net income for the *waqf* in 2007 should only be $42,232. Due to this accounting treatment, the accumulated fund of the *waqf* at year end has suddenly ballooned to $3,422,450. Refer again to Table 7.3.2.1, the capital recorded as $80,288 is the initial *waqf* capital during its inception. Therefore the value of $3.5 million showed that the value of its capital has increased due to the increase in the value of its property. In 2008, referring to the same *waqf,* the value of its fund has decreased by about $500,000 to $3.05 million. This also reflects the decrease in the valuation of the property. Hence, in the case of the *waqf,* what is the value of the capital that should be preserved? Should the capital of $80,288 be preserved since that is the initial capital since inception that was recorded or should the amount based on current market valuation of the capital be preserved? For this particular case study the capital to be preserved should be the current market valuation. Hence, when a *waqf* is to be sold, the criteria for selling the *waqf* should be based on the market valuation of the property. If the property is valued at a current market price of $2 million, then it is allowed to sell the property not less than 15% of the valuation price. This is the current internal policy guideline prescribed by Muis. [256] Therefore, any amount arising from the gain of the property sold should not be distributed as disbursement to beneficiaries but reflected as the capital of the *waqf*. This will therefore ensure consistency in distributing its usufruct and not the capital of the *waqf*. Diverging from the policy of preserving the capital of the *waqf* may lead to the premature demise of the *waqf*. Therefore it is important that the accounts are recorded properly to show the distinction between capital and income and also real income and ‘paper’ income.

The second example of the extracted capital of the *waqf* is the *Waqf* Aljunied Fund (WA/90). In this example, the *waqf* does not have any property. It is a cash waqf. It invested its capital in Fusion Investment which holds the 11, Beach Road properties. Therefore, the *waqf*, will be subjected to a valuation based on the market valuation of the said company. In this example, the *waqf* had a capital reduction

[256] The internal policy guideline of *waqf* is kept by the Zakat and Wakaf strategic unit in Muis.

from $8,899 to $8,601 in 2008. Therefore, the administrator of the *waqf*, had to scrutinise this capital reduction most carefully, so as not to allow it to be further eroded. The fluctuation would mainly be in terms of a valuation of the properties. In the second case, there is a limited option for the *waqf* to invest in a financial instrument that could give a reasonable return to sustain the yearly income. This particular *waqf* only has cash in its portfolio because the property of this *waqf* was once acquired by the government to make way for a national development and hence compensation money was given for the acquisition.[257] This compensation money was too small to purchase a property; so in the earlier years this amount was invested in fixed deposit which gives the very low yield per annum of less than half a percent.[258] This yearly income is insufficient to even pay for the yearly expenses. As a result, income has gone down and Table 7.3.2.1, illustrate the effect of the erosion in income which has led to the capital erosion of the *waqf.* This negative income, if let to persist, will result in the erosion of the *waqf* capital and eventually lead to the *waqf* being extinguished. Therefore, it is important that the *waqf* must have clearer investment objectives and strategies so that such occurrences will be avoided. Magda(2009: 97), in her book on cash *waqf* proposed that the model of cash *waqf* investment proportion is that of the income 70% should be apportioned to the beneficiaries, 20% allotted for management fees and 10% ploughed back to reserve or added back to the capital. In this way, the capital will not be locked with an old value which will make it incapable of generating the desired income for the future and current needs. Therefore, if a *waqf* needs to increase its capital based on a capital accumulation of say 5% or 10% on an annual basis then a deliberate policy should be in place to see that the capital of the *waqf* increases over time. The two *awqaf* illustrated in Table 7.3.2.1 shows that *waqf (*WA/6*)* which have property as its assets shown a remarkable increased in its value of its capital by 3,700% with active portfolio management.[259] On the other hand, Waqf Aljunied which was kept as cash

[257] Net compensation of $22,597 was received on 22 Mar 1977. Compulsory acquisition of lot 382 TS IV –no.1 China Street.
[258] The fixed deposit rate as at 9th May 2010 was 0.45% for a one year tenure quoted by DBS Bank for amount of $1,000 to up to $1 million. Accessed on 9th May 2010 at http://www.dbs.com.sg/ratesonline/Pages/fdsgd.aspx
[259] The initial capital of $80,288 which has increased to $3,051,281shows a 3700% increased as compared to waqf of WA/90 where the capital has been reduced from $28,390 to $19,789 which is 30.3%.

with an inactive portfolio management that is placing it in fixed deposit has resulted in a capital reduction of 30.3%.[260]

On the expenditure side, there has been concerted effort by Muis to reduce costs. For example, the audit fee for such *waqf* has been waived[261]. Due to the limited number of *shari'ah* compliant products that the *waqf* can engage in, all the cash from *waqf* funds is pooled together to buy a share in a property. This was discussed in Chapter 3. This is the example of the purchase of 11 Beach Road and most of the cash *waqf* now owns a share in this property. Again this is an example of how creative management of *waqf* assets can help a *waqf* to sustain its life even though it has been subject to acquisition.

From the accounts of the *waqf* of Muis, properties have shown a strong capital preservation element. So far the *waqf* has been able to at least protect the capital ownership. On the other hand, for the cash *waqf*, due to limited investment opportunities for *shari'ah*-compliant product and the fact that a cash *waqf* usually shows a greater tendency to diminish in value, will make the proposition for *waqf* assets in the form of property, at least in the case of Singapore, to be more attractive and will fit the capital preservation requirement more appropriately. Looking back at the literature review, it shall be noted that cash *waqf* do also have an element of capital preservation as cited by Cizakca (1995; 2000) from a case study during the Ottoman empire.

Capital preservation seems to be a mandatory requirement for *waqf* investment. This is in fact emphasised in most of the *waqf* deeds. However, there are several *waqf* where the capital has been reduced in terms of the sale of land for example in the case of *waqf* Jabbar, a row of houses in Duku Road. After the development, two units of the housing were sold to pay for their development. However, this has caused a reduction in the land size but not on the value of the *waqf* as it has undertaken a development project. The case was brought before the fatwa committee. This was the committee's response (the response is translated from the Malay version).[262]

> "*The Fatwa Committee is of the opinion that this waqf and other similar waqf is different from a waqf mosque where the structure of the waqf is for a specific purpose. If the intended objectives of the waqf can be continuously*

[260] Ibid.
[261] There is no audit fee charged for some *awqaf* ; based on Muis *waqf* accounts FY 2007.
[262] Minutes of Fatwa Committee meeting 1989/92 dated 6 Feb 91 at Muis, conference room.

> *fulfilled, it cannot be said that the waqf will be terminated if it were to be sold, and the sale proceed can be used to buy other waqf properties and the proceeds can be used to continue the objectives set by the waqif. In this case, the Fatwa Committee opines that if the asset is to be sold it can be sold. However it must be taken care such that it does not exceed the amount required, for example the amount needed is $1 million therefore the assets that can be sold must have a $1 million value only. This is so that the identity of the waqf will not be lost in time. And if there is other ways of solving this problem, for example by selling on a leasehold tenure than it should be sold based on this leasehold basis."* (Feb 1991, Fatwa Committee)

From the above decision taken by the fatwa committee it is clear that outright sale of *waqf* property should be avoided unless there are no alternative ways of developing the asset so that the *waqf* can be perpetuated.

7.4.3 Benchmarking the income of *waqf*

All investment portfolios will have a benchmarking system in place to assess the performance of the portfolio. Hence there are many indexes which can be used for benchmarking such as the MSCI, the Dow Jones, the FTSE and other indexes depending on the types of portfolio involved[263](FTSE, 2010). In *waqf* investment are there any benchmarking criteria being set? What is the *waqf* asset being benchmarked and what should it be benchmarking since capital preservation and a safe investment mode are the preferred investment option for a *waqf*.

Responses to these questions in a focus coding manner are presented in Table 7.3.3;

Table 7.3.3: Focus coding 3 for Question no.2 (Investments of *waqf* assets)

Return above fixed deposit rate or benchmark according to market rate for rental properties.	
Interviewee 7	Mark to market
Interviewee 9	Management expect at least a return of more than the fixed deposit rate and at least mark to market rental rate.
Interviewee 12	According to beneficiaries needs
Interviewee 14	For a trust account it depends on the mandate given, if the trust requires 10% return then the portfolio must be design to match the return required.
Interviewee 18	Based on market rental rate

[263] MSCI or Morgan Stanley Composite Index, FTSE (Financial Times and London Stock Exchange) . FTSE calculates over 120,000 end of day and real time indices covering more than 80 countries and all major assets classes. The link can be obtained from http://www.ftse.com/About_us/

Interviewee 9 mentioned that "management will expect at least a return of more than the fixed deposits rate and at least mark to market: that is if the market is performing at 5% for say rental return then we should also attempt to give a return of 5%. Another way is also to outbid the Key Performance Indicator or KPI of last year's performances"[264]. Again the KPI looks at the aggregate performance of *awqaf* as a whole and not on an individual *waqf* fund or at the different yields for the different asset classes. In the case of BMT, the expected return is also benchmarked against the needs of the beneficiaries; the investment team will try as far as possible to meet the need of the *waqif* as expounded in the will.

Most of the cash *awqaf* or surplus short-term cash is placed in a fixed deposit account which is interest based. Although interest is not allowed for personal consumption as stated in the Singapore Fatwa (see footnote 273), the view is more acceptable if interest is used by the Islamic Religious institution (see the lengthy discussion on sec. 7.4.4 on *shari'ah* compliance view of the *shari'ah* scholars in Singapore). Placing the amount in a fixed deposit account will at least have a capital preservation element; secondly, the cash surplus or cash *waqf* are very small for them to be placed in separate specialised investments where a minimum sum is required for such private fund management unless this were to be done in-house; thirdly, there are limited investment options for the *waqf* as it seeks safe investment criteria. One of the interviewees mentioned that for stock and shares the MSCI world index[265]can be a benchmark for the *waqf* return. According to him who is also the investment officer of *waqf* assets, this benchmark was proposed for the *waqf*.

In the case of rental properties it is easier to check the prevailing rental rate for these kinds of property and compare the yield. In the case of Harvard Endowment, Trust Universe Comparisons Services or TUCS are used to benchmark their performance. It is a benchmark used for the performance of institutional assets.[266]

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[264] Muis KPI is done yearly and there is a quarterly performance review of the KPI in all the strategic areas that each strategic unit is performing. This reference is made to a Muis internal annual performance planning document.

[265] MSCI index is the Morgan Stanley Composite Index. It is a stock market index of 1500 'world' stocks. It is a common benchmark for world or global stock funds.

[266] The average annual return is about 8.9% over the past 10years and 6.2% over the last 5 years ended June 30 2009. However the median fund average annual return of TUCS is 3.2% over the last 10 years. More information of TUCS can be obtained through the website http://www.wilshire.com. Accessed on 11 Dec 2009.

Benchmarking according to the beneficiaries needs is important. However, this may not be possible with the expanding needs of the beneficiaries. For example, the Harvard Endowment only provides one-third of the beneficiaries needs.

The other sources of income such as fund raising and charging for school fees will be part of funding for the university.[267] Hence the endowment only serves as a supplementary amount and is unable to meet the total operating expenses more so to exceed the beneficiaries need.

While income stream is important for the beneficiaries, it has not been emphasised enough in the management of *waqf* assets. On the contrary, the interviews of the trusts fund managers, revealed that if the trust mandate is to give a certain return, the fund managers must deliver the return required from that mandate. The competitiveness of managing such trust accounts provides encouragement for the trustee, in this case the fund manager company, to ensure that such benchmarks are met, lest underperformance will render the fund to be transferred to another fund manager. This competitive environment where there is more than one trust company to manage the fund has led the managers to account for their performance. In the case of *waqf*, there is only one trust company, BMT (British Malayan Trustee), which manages four of the *waqf*. The rest are being managed by Muis cum Warees and the private trustee himself.[268] This monopoly in the investment of *waqf* assets has somehow led to the *waqf* not being able to maximise its competitive advantage. Having said that, on a precautionary note, the size of the *waqf* is also an important determinant as to whether there should be more than one trustee managing the *waqf* as there could be disadvantages in terms of economies of scale in managing the *waqf* which would also render it inefficient and costly to administer.

7.4.4 *Shari'ah* compliance

It is expected that *waqf* investment should be placed in a *shari'ah*-compliant product. This issue was explored with the participants and focused coding for this is depicted in Table 7.3.4.1. There were two groups of interviews conducted for this question. Therefore, the theme on *shari'ah* issues will be grouped and analysed together. Table 7.3.4.1 focuses on the responses from the investment and

[267] See http://www.hmc.harvard.edu/pdf/2009%20HMC%20endowment%20Report.pdf. Accessed on 13 Dec 2009

[268] See chapter 4 for the references on the structure of waqf management in Singapore.

management respondents, and Table 7.3.4.2 focuses on the *shari'ah* group of respondents fo which there are four *shari'ah* scholars. From these interviews we are able to juxtapose the different opinions and stances on this important aspect of *waqf* investment.

Table 7.3.4.1: Focus coding number 4 for Question 2(Investments of *waqf* assets)

Should be *shari'ah* compliant	
Interviewee 12	It is difficult to get a *shari'ah* compliant product but since its *waqf* assets we have to comply
Interviewee 18	It has to be *shari'ah* compliant we should propose more products and clear with fatwa committee
Interviewee 21	Its limited but attempt must be made to get a *shari'ah* compliant product

Table 7.3.4.2: Answers to Question 3 (*shari'ah*')

Question 5	Must the *waqf* assets be dealt in a *shari'ah* compliant manner?
Focused Coding	
1	Recommended but if there is high risk thae it will still be allowed to be placed in a conventional instrument
2	*Waqf* must be placed in a *shari'ah* compliant instrument
3	*Waqf* should be placed in a *shari'ah* compliant instrument but there are many interpretations of the *halal* and *haram*
4	What is best for the *waqf* to ensure that the best returns are received. Only very clear *haram* activities are not allowed but where there is ambiguity and no clear consensus then they should be allowed.
Theme	*Waqf* assets are to be dealt in a *shari'ah* compliant basis however in the issue of *halal* or *haram* activities there are differences in opinion as to what is *halal* and *haram*.

Table 7.3.4.3: Focus coding number 1 for Question 5 (*shari'ah*)

Recommended but if there is high risk then it will still be allowed to be placed in a conventional instrument	
Interviewee 4	Allowed but discourage
Interviewee 5	*Bait-ul-mal* is allowed to place in conventional instrument and so is *waqf* fund however if there is *shari'ah* compliant instrument with the same risk and return profile then you may opt for the *shari'ah* product
Interviewee 6	Yes allowed to put to conventional product if there is no option
Interviewee 7	What is *shari'ah* compliant may have different interpretation. Practically we can't escape from putting in conventional instrument as there is not many option

For many other *waqf* administrators, the question of whether a *waqf* can have conventional instrument usually does not arise. *Waqf* is itself a religious act: when a Muslim has bequeathed his or her assets as *waqf*, he or she will expect the return from doing good deeds. It is understood that the assets are given to God and the usufruct should be distributed to the beneficiaries. Therefore it is not right to invest the capital in prohibited sources. The usufruct should be given for the purposes of charity. In the *maqasid al-shari'ah* it is mentioned that a *halal* source, in this case a *waqf*, cannot be used in a *haram* way, as the outcome would also be *haram* (Kamali, 2007).

However, in Singapore, this question is not easily tackled, in the sense that there are not many alternative or *shari'ah*-compliant options for the authorities to use the *waqf* assets such as cash *waqf* in a *shari'ah*-compliant instrument. Second, from the earlier interviews the answers implied a favourable attitude of the *shari'ah* officers towards interest, as many see interest as not equivalent to *riba.* One of them even condoned the taking of interest for an institution like *Bait-ul-mal*. Others, on the other hand, seems to be sceptical of the manner in which Islamic banks are conducting their operations. Take for example the *Wadi'ah* account offered by banks which offer Islamic windows such as the OCBC Bank and Maybank. The deposits are placed in Singapore government bonds. Because of the necessity to place cash/assets in secure deposits, government bonds are perused. Are these also not interest bearing deposits? In view of this, scepticism about *shari'ah* scholars is builds up; and these scholars therefore do not want the community to be short-changed just to promote 'perceived' *riba* free banking as claimed by the banks. This attitude is attested by Warde where he mentioned that some people believe that Islamic financial institutions are no different from conventional ones since interest is used under different names (Warde, 2000: 13).

Therefore from the findings, the placement of *waqf* assets in a conventional instrument is tolerable, because the bottom line is that the *waqf* must not be short-changed and have less income for distribution because options are limited. However, some of the interviewees still maintained that it is important to support Islamic banking and finance and further reiterated "Islamic finance is seen to have moral standing due to its ethical emphasis" quoted from interviewee no.4.

Furthermore, interviewee 5 made a distinction between individual and institutional differences in his perception of interest when he stated that interest is not allowed at a personal level. He viewed that, in the case of *Bait-ul-mal*, and even *waqf* fund the ruling on prohibition of interest is not applicable. That is *Bait-ul-mal* is allowed to consume interest. His also subscribed the view that since *Bait-ul-mal* is the fund of the community, *Bait-ul-mal* can therefore invest in interest bearing instrument. This view is however not supported by many *shari'ah* scholars. Because, this is construed that *Bait-ul-mal* fund can involved in the participation of investing in prohibited investment to seek return. Hassan in a translated version from his book, says that *Bait-ul-mal* is an institution which forbids any transactions involving *riba* and to involve its assets into any kind of *riba* generating income is wrong (Hassan, 2003: 3).[269] Interesting to note also is that interviewee 5 was initially comfortable with investing in interest-bearing and non-*shari'ah* compliant instruments. However, when the researcher mentioned the word *haram* interviewee started to alter his view and say that if there is a *shari'ah*-compliant product then it should be given priority. He agreed that investments in *haram* product should be avoided. However his views tended to relax if the investment were to be made via the *Bait-ul-mal* institution. His view is that to be consistent, if *Bait-ul-mal* can take interest then other funds (*waqf* fund) should also be able to take interest.

Interviewee 6, was very careful about allowing or not allowing interest for *waqf* funds. His view is not to jeopardise the *waqf* and he subscribe to the religious opinions that it is permissible to go for conventional investment for the sake of protecting the *waqf* itself.

However, interviewee 18, who is an administrator, mentioned that there is no clear obligation to comply with *shari'ah*-compliant products or financing. However, according to him, *waqf* should not invest in any conventional bank investment stock. As far as possible, investments stock should be placed in a *shari'ah* compliant product.

In the management of *waqf* properties, there are clear guidelines. They specifically disallow any form of liquor, gambling, prostitution and any promiscuous activities on *waqf* premises. However when taking financing decisions, risk and cost are very important. If *shari'ah* financing can compete on both terms then definitely *shari'ah*-compliant financing will be the ultimate choice. Bottom-line, *waqf* should not be short-changed.

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[269] The above quote was written in Malay and translated in English. In his footnote he mentioned that the Prophet Muhammmad (pbuh) and all his caliphates have forbidden all transactions involving *riba* with regards to the country's treasury. See Syam al-Din al-Sarakhsi, al Mabsut, XIV, Cairo, pg4-8.

Table 7.3.4.4: Focus coding number 2 for Question 5(*shari'ah*)

Waqf must be placed in a *shari'ah* compliant instrument	
Interviewee 4	It must be placed in a *shari'ah* compliant instrument in the first instance.
Interviewee 15	Must be *shari'ah* compliant

As can be seen from Table 7.3.4.4 a *waqf* must be placed in a *shari'ah*-compliant instrument. Only interviewee 4, of the religious cluster, is of the opinion that *waqf* must be placed in a *shari'ah* compliant product as he thinks that at the moment there are sufficient *shari'ah*-compliant products available. This view is only advocated by one other *shari'ah* scholar where less flexibility is given on a *waqf* to be invested in a non-*shari'ah* compliant product. His view is being concretised because of the financial crisis suffered in 2008 by many banks around the world. He believes this is the effect of *riba*, *gharar* and excessive speculation, the elements prohibited in Islamic finance. It should be noted that many articles and news items have opened his views on economies which are based on interest, excessive debt and have somewhat collapsed.[270]

Interviewee 15, with his legal and *shari'ah* background, is also of the opinion that *waqf* should have all its investments and activities *shari'ah*–compliant. There cannot be any compromise as this is an *ibadah* as the assets are consecrated to God. Hence you cannot intertwine the *halal* with the *haram* activities.

Table 7.3.4.5: Focus coding number 3 for Question 5 (*shari'ah*)

Waqf should be placed in a *shari'ah* compliant instrument but there are many interpretations of the *halal* and *haram*	
Interviewee 7	It should be placed in a *shari'ah* compliant instrument but what is *halal* and *haram* is subject to different interpretation.

As can be seen in Table 7.3.4.5, interviewee 7, who is not from the religious cluster but is instrumental in the management of *waqf*, feels that the investments of a *waqf* must be placed in a *shari'ah*-compliant product. However, he thinks that there are currently many interpretations of the *halal* and *haram*. Therefore, what some

[270] Bloomberg news: Fed says United States used 'Flawed Information' to deny help to Lehman Brothers. By Joshua Gallu dated 1 Sep 2010. Reports can be accessed through http://www.bloomberg.com/news/2010-09-01. Accessed on 1 Sep 2010.

think is *halal* may not be *halal* to others. There are still many ambiguities in Islamic financial products.

Although there are mixed views on this issue, since, in the case of Singapore, the idea of having a *shari'ah*-compliant product is very limited, there has been acceptance of not investing with *shari'ah*-compliant products. Most of the interviewees of the administration and investment group agreed that as far as possible all attempts must be made to invest it in a *shari'ah*-compliant product. There were however, mixed views expressed in the interviews done with the *shari'ah* scholars. Table 8.8 shows that while the *waqf* assets should be invested and handled in a *shari'ah*-compliant manner, there are still issues as to the interpretation and opinion of *halal* and *haram*. This statement arises due to the fact that there are still some who think that interest may not necessarily equate to *riba* as some scholar have interpreted, especially in the infamous fatwa cited by Muhammad Sayyed Atiyya Tantawi[271](Masud, 1996). On theoretical grounds, more flexibility is tolerated since it is a *waqf* fund. As discussed earlier in this chapter, one of the *shari'ah* scholars mentioned that *Bait-ul-mal* can accept interest because *Bait-ul-mal* is the fund of the community; it can accept stolen money and money derived from *haram* activities etc. Hence to invest in an interest bearing instrument is allowed as there are not many other options and since it is *Bait-ul-mal* money it is permissible to do so. The same goes for *waqf* funds. Moreover, Table 8.2 shows that even if there is high risk involved the option is still viable to put them in conventional instruments. These are mentioned by most of the respondents from the *shari'ah* group, with the exception of interviewee 4 who said that it is allowed but discouraged. Interviewee 5 mentioned that "it is our moral obligation to support the *shari'ah*-compliant products, but if there is no alternative or the alternative is giving a better return than you still can put in the conventional product". In essence the views received from the *shari'ah* scholars are very flexible. Most agree that in terms of return, if the return attributed to the conventional product is superior to the *shari'ah* compliant product, the conventional product should have more priority. This view is understandable as the *shari'ah* scholar is still not convinced on the mechanics of Islamic finance as there are many cases of deception and mimicking the conventional system, which render the

[271] The fatwa by the grand mufti of Egypt in Sep 6, 1989 , Tantawi issued a fatwa "On Some Banking Operations" where he legitimized the "capitalisation certificates"(*shahdat al-istithmar*) in other words the government bonds underwritten by Egyptian banks. However the legitimizing of this certificate was on the condition that it is a deposit and not a loan and the income received is not fixed but variable.

conventional product not to have strong credibility (Islamic Finance News, El-Gamal, 2006). Secondly, the dearth of *shari'ah*-compliant products in Singapore has led to the convenient application of '*dharurah*' being applied in most of these cases (Krawietz, 2001).[272] The lack of understanding on the principles of Islamic finance has also shaped the views of the interviewee, although it is clear that the fatwa on interest issued by the Fatwa Committee is that interest is prohibited for personal consumption (Fatwa Committee, 15/11/1988)[273]. Officers view the prohibition at a personal level and not at an institutional level as they see that institution like Muis needs to move and develop the community. This is of greater importance than worrying about *riba*.

In summary the product should be *shari'ah* compliant but it is not a must or mandatory for a *waqf* to invest in such instruments subject to the return and risks of the investible product. This is the *shari'ah* scholars' view, but some of the administrative and investment officers view it differently. They think that it must be *shari'ah*-compliant and must be cleared by the fatwa committee if there is ambiguity unless there is really no option. However, such a flexible approach in the *shari'ah* status for *waqf* assets cannot hold for long as more people are aware of the need to be *shari'ah*-compliant in the field of *muammalat*.

7.5 Asset allocation strategy for *awqaf*

The question in this section is what is the ideal asset allocation strategy for a *waqf*? Table 7.4 lists the answers.

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[272] The concept of *dharurah* expounded by the religious scholar cannot be a perpetual reason. The concept of ij*tihad* is therefore more important to address the modern and technological advances not found during the time of the prophet. As mentioned by Krawietz that all religious scholars cannot be a blind imitators of al- Shatibi, with some scholars working on the brink of secularism but he said that scholars are now working on the development of legal theory and issuing new fatwas which will provide solutions to problem of modern life. See page 191 of Karwietz edited section.

[273] Fatwa Committee in its meeting dated 15 Nov 1988 , rule that there are 2 opinion with regards to interest. The interest received from the bank is derived from 2 sources, one is clearly prohibited that is the income through the interest earn from lending and the other is where the bank goes into real investments which is considered permissible. Because of the mixed return given to the depositors, the interest received from the bank is thus deemed to be *shubhah (the existence of the element of prohibited sources)* . Therefore this is where the fatwa has opined that it is better to give the return to *Bait-ul-mal* or used it in a way that is not direct for personal consumption for example payment of tv licence.

Table 7.4: Answers to Question 4 (investments of *waqf* assets)

Question 4	What should be the ideal asset allocation strategies for *waqf*?
Focused Coding	
1	Local Property with regular income
2	Stocks and shares
Theme	The assets should predominantly be in properties with regular income and only a very small percentage may be put in stocks and shares which are relatively safe and secure.

The theme derived in Table 7.4 is that assets should predominantly be in properties with a regular income and only a very small percentage should be in stock and shares which are relatively safe.

7.5.1 Properties with regular income

The first focus coding answers for the asset allocation strategy concern property with regular income. The respondents' answers are listed in Table 7.4.1 below.

Table 7.4.1: Focus coding number 1 for Question 4 (investments of *waqf* assets)

Property with regular income	
Interviewee 7	Properties are non-speculative, stable simple and gives regular income
Interviewee 9	Property is perceived to be permanent and most *waqf* were initially created using properties so we will stick with the status quo.
Interviewee 12	Most of the *waqf* mandate requires it to be in properties or any other permanent investment.
Interviewee 18	Mostly we inherited the *waqf* with a property based so there is not much choice

Interview 9 mentioned that property has the characteristic of being permanent. Property is also a natural choice. Most of the *waqf* when they are created were based on property. There is only one *waqf* in Singapore, the *waqf* of MSE Angullia, which has the elements of both properties and cash because the Will allows for investment in stocks and shares. So, maintaining the status quo nature of a heavy reliance on property should stay.

Interviewee 7 mentioned that because of the permanent nature of property and its physical assets, it is deemed to be non-speculative. For stocks and shares the price volatility is very high. However for property because of its cumbersome nature it takes time to disposed of. Hence the speculative nature has been reduced due to the frequency of the selling and purchase of the stocks. Interviewee 7 also said that property is stable and gives regular income. In buying stocks and shares, company performances vary and as a result the dividend yield will be quite volatile. For a company, it is more difficult to predict the income and performance of the company as there are so many variables and factors that may cause the underperformance of the stocks. However for property it will be relatively easier to predict the market rental rates around the area.

While Cizakca mentioned that cash can also have a permanency feature, it is perceived otherwise. This may also be due to the fact that cash or its equivalent is always reflected as current assets in the balance sheet, and the liquidity characteristics of cash make it vulnerable to be expense off (Çizakça, 2000; Cizakca, 1995). On the other hand, physical property is more difficult to be disposed off hence its value will not be easily eroded.

Before we analysed the answers in the interview below, Table 7.4.1.1.below juxtaposes the asset allocation strategy placed in Muis, the Harvard Endowment and the Kuwait *Awqaf* Public Foundation (KAPF) allocations. This will give a good comparison of the way various institutions manage their assets by the different weightings placed on the different asset classes, which determine the income received by the portfolio.

Table: 7.4.1.1: Assets allocation portfolios of the various institutions.[274]

Assets Allocation	**Harvard (1) (2010)**	**Kuwait *Awqaf* (2) (2006)**	**Muis*Waqf* (3) (2007)**
Equities	46%	47%[275]	5%
Absolute Return	16%		-
Commodities and Real Estate	23%	53%	79%
Fixed Income	13%	-	-
Cash	2%	-	16%
Total	100%	100%	100%

Source: 1. Harvard Management Company – portfolio evaluation 2010 (asset allocation strategy)
2. Kuwait *Awqaf* Public Foundation (KAPF) Year 2006 (Busharah, 2008) – actual
3. Muis *waqf* accounts FY 2007 – actual

[274] The data does not compare on a similar year as data are collated on information available at the time. However it will give a fair comparison of the different weightage placed on the different asset classes.

[275] The investments in equities are direct investment in companies dealing with the financial services sector. The financial sector invests directly with Kuwait Finance House.

While the Harvard Endowment has a wide diversification of portfolio, the Muis *waqf* relies heavily on property assets. The Harvard Endowment brags about a 10-year investment return of 8.2% but this is after the heavy losses they incurred during the financial crisis. Before the financial crisis they were able to achieve a double-digit return. The Muis *waqf*, on the other hand, achieved a net yield of about 3.4%.[276]

The difference is that Harvard Management assets size are huge ($26 billion) whereas Muis waqf assets are only worth about $473 million[277]. Other factors are due to the active management of the portfolio managed by in-house and outside expertise and using appropriate benchmarking tools.

The next focus coding answers on stocks and shares are shown in Table 7.4.2

Table 7.4.2: Focus coding number 2 for Question 4 (investment of *waqf* assets)

Stocks and shares	
Interviewee 7	Shares in underlying properties such as REITs should be encourage the rest of the stocks and shares are very risky.
Interviewee 9	We can place in stock and shares where there are cash *waqf*, however this is also in small percentage.
Interviewee 12	The mandate for some of the trusts allow for stocks and shares so we place according to the requirement of the mandate.
Interviewee 18	Stocks and shares can only be created if we have good managers to manage.

While most of the interviewees agree that *awqaf* assets should be placed in properties, most agreed also that a small percentage of them can be placed in stocks and shares. However interviewee 12 mentioned that this investment can only be done if there is a good manager to manage the shares and there are capable staffs to oversee the portfolio closely. Interviewee 7, in addition, mentioned that even where shares and stock can be allocated they should be placed where the underlying assets are in properties such as REITs. He thinks that the other stocks and shares are deemed to be too risky. These findings show that the asset allocation strategy in favour of property is very high. While we can see in the case of trusts, that the manager mentioned that the asset allocation strategy varies from trust to trust, some have high risk portfolios. Thus the asset allocation will suit the risk–return profile of the client. Some may go for high-income yield and hence the trustee must be able to match the kind of return each mandate is set to achieve.

[276] See Table 7.6.4.1 of this chapter.
[277] Muis Annual report 2009

In summary, it is clear that there are no clear investment guidelines and strategy for *waqf* assets as most of them are inherited as property. Cash *waqf* portfolio is further reduced where inclusion of all the cash is converted to a share in the property at 11 Beach Road. Therefore, even if there is a new injection of *waqf* funds from the public, the tendency is still to place the *waqf* assets in property, be it commercial, industrial or residential. The strategy is mostly based on enhancing the properties such as an asset-migration exercise and an expansion of the asset base which was discussed earlier in the initial findings. Performance indicators must also benchmarked according to the prevalent market performance of each asset classes.

The next section will discuss the contemporary instruments used for financing *waqf* development such as those in using REITs, which naturally fit the investment preference for *waqf* assets to be in property. However with REITs, there are hybrid characteristics in both properties and shares.

7.6 Contemporary instruments used for financing *waqf* development

As discussed in the previous section, *shari'ah* compliancy is not a settled issue in *waqf* management and financing. But, in any case, there are very limited instruments for the financing of *waqf* development which are *shari'ah* compliant. This can be attributed to the infancy stage of *shari'ah*-based financing in Singapore. The lack of products and the lack of knowledge to structure *shari'ah*-compliant financing have made the problem even more challenging. While a *waqf* has its own unique requirements, it is still viable and attempts must be made to create more instruments and investment opportunities for *waqf* assets so that they can aspire to be tools for the alleviation of poverty in the community (Ahmed, 2004).

Many attempts, however, have been made by Muis to conform with the *shari'ah*-compliant financing of its *waqf* assets which were discussed in Chapter 3. Chapter 3 gave detailed examples of the various financing techniques available for *waqf* and quoted many case examples.

In this research a particular structure such as REITs will be examined as these are vehicles with a property base which suits the asset profile for a *waqf* , especially a *waqf* with a large property base.

Hence this section particularly focuses on the REITs structure for a *waqf*. Table 7.6 shows the answers from the respondents.

7.7 Problems for a *waqf* venturing into REITs

Table 7.5 below illustrates the answers to Question 1 about a *waqf* venturing into a REITs structure.

Table 7.5: Answers to Question 1(contemporary instruments used for financing *waqf* development)

Question 1	What are the problems or issues for a *waqf* to venture into a REITs structure?
Focused Coding	
1	Small pool of quality assets
2	No tax advantage
3	Ownership, control and *shari'ah* compliance
4	Pricing, confidence and concentration risks
Theme	There are several issues to look out for in structuring *waqf* assets in a REITs structure, these requirements are: large pool of quality assets, tax advantage status, ownership, control and *shari'ah* compliance.

The interviews were carried out with selected individuals who have had experience in the REITs set up and the added advantage of working on *waqf* assets as well. While this is not an exhaustive list, these are the problems that have been a major concern for structuring a *waqf* REITs in Singapore.

7.7.1 Small pool of quality assets

One of the problems faced is that the current pool of quality *waqf* assets is too small to create a viable REITs structure. The various responses from the interviewees are listed in Table 7.6.1 below.

Table 7.5.1: Focus coding Number 1 for Question 1(contemporary instruments used for financing *waqf* development)

Small pool of quality assets	
Interviewee 7	In order not to pool all *waqf* funds as REITs we need a sizable properties, *Bait-ul-mal* properties and other *waqf* institution properties from other countries must be considered.
Interviewee 8	The asset based for Singapore REITs is inadequate. You need at least $0.5billion dollars for it to be viable.
Interviewee 9	We need to identify almost all our *waqf* properties for REITs to make it viable. Our assets are not enough to go into REITs
Interviewee 10	You do not have enough assets and hence you need to acquire more.
Interviewee 19	You need a sizable assets to launch REITs, the Singapore *waqf* properties alone may not be enough and will need from the other countries participation to make it attractive

To make a viable REITs a minimum capital of US500 million[278] is needed. Although a smaller amount is still possible, it will not constitute a good base and the pricing of the assets will not be attractive, and it will not attract a large pool of investors. In this respect, because of the small pool of assets that *awqaf* in Singapore have, which, according to the latest valuation is about S$500 million; includes properties and assets which may not be viable to be considered for REITs. Interviewee 19 and 7 advocated the need to pool resources with other countries which have *waqf* properties to make the REITs more attractive. Interviewee 7 also suggested that what Muis can do is to pool all its assets be they *Bait-ul-mal* or *waqf* and with those of other countries. Interviewee 10 also mentioned the need to acquire more properties to expand the *waqf* base. According to the data posted by the Singapore Exchange the smallest type of REITs listed is the 'First REIT' with an asset value of $339 million. The largest is an A-REITs with assets worth SGD$4.599 billion (SGX, 2009).

In this case, if the following *waqf* properties are identified as suitable for a REITs, then a REITs may still be doable. For example;

1. Somerset Bencoolen Service Apartment - valued at $81.6 million[279]
2. 11 Beach Road – valued at $50 million[280]
3. Wisma Alsagoff - valued at $30 million
4. Suntec City - valued at $12 million (*Bait-ul-mal* property)
5. Mixture of *Bait-ul-mal* properties managed by Warees

The total value from the above is estimated at only about $200 million and therefore to achieve a viable mass there is a need to combine these with other *waqf* properties from outside Singapore or raise more funds to acquire more properties.

Therefore it is important that the option of acquiring more properties or linking with non- Singapore properties be included in the REITs structure.

7.7.2 No tax advantage

Table 7.6.2 below presents the answers from the respondents on the absence of tax advantage as a disadvantage factor in the creation of the REITs structure.

[278] Based on amount cited by interviewee 7.
[279] Based on valuation done by Chesterton Suntec International Pte Ltd dated 31 Dec 2008.
[280] Based on estimated valuation.

Table 7.5.2: Focused coding Number 2 for Question 1(contemporary instrument used for financing *waqf* development)

No tax advantage	
Interviewee 7	Although there will be no tax advantage for *waqf*, there will be tax advantage for the investors and may be for the overseas *waqf*.
Interviewee 19	The most important reason to go into a REITs structure is the tax advantage. However for *waqf* properties these advantages may not be an advantage after all because currently *waqf* income is not taxable.
Interviewee 25	There will not be tax advantage for the *waqf* but it may have for the other investors which are taxable.

The next factor which will not make it attractive to either the issuer or to investors is that there is no tax advantage. One of the advantages to go into REITs is the tax-advantage nature of the structure. Since a *waqf* is not a taxable entity under Sec.13(1)(e)[281] of the Income Tax Act, it will not be an important feature for the REITs. The responses from the interviewees as illustrated in the table below are mixed in the sense that while it will not be attractive for Singapore *waqf* it may be attractive to acquire overseas *waqf* properties where *waqf* is taxable. And it will be attractive to investors whose income may not be taxable depending on the kind of investors that they belong to. The types of investors will be discussed in the recommendation chapter.

From the interview responds it is clear that since *waqf* is not taxable, it will reduce the attractiveness for *waqf* funds to go into REITs.

7.7.3. Ownership, control and *shari'ah* compliancy

The next problem is that of ownership, control and *shari'ah* compliancy and the criteria for managing and financing assets. Table 7.5.3 lists the responses from the interviewees.

[281] See footnote 49 in Chapter 2.

Table 7.5.3: Focused coding Number 3 for Question 1(contemporary instrument used for financing *waqf* development)

Ownership, control and *shari'ah* compliancy	
Interviewee 1	There may be jurisprudential issues involved with the ownership of REITs
Interviewee 7	Ownership of REITs will be shared with other shareholders as well, in this sense you do not hold the entire property holdings but hold a share in the REITs which holds the underlying assets.
Interviewee 9	*Shari'ah* issues with respect to the ownership of REITs must be settled.
Interviewee 10	May lose control in the management of REITs
Interviewee 19	In middle east ownership is a problem, hence you need to be careful with middle- east properties and ownership issue.
Interviewee 25	Traditionally people are used to holding a physical assets in one piece, the sharing of properties and ownership are something new. We have done this for the purchase of 11 Beach Rd, where ownership of the said properties are shared by many *waqf*.

In the earlier interview, the respondants say that while there is a need to go for cross- border REITs or global asset acquisition, there is then the next problem of ownership of foreign properties. For example, interviewee 19 cited that in the Middle-East, especially in the area of the '*haram*' ie Mecca and Medina, foreigners cannot own any assets and only Muslims have the right to the title in those cited places. While there may be ownership issues in other countries, there are also ownership issues with the *waqf* properties. Interviewee 7 is concerned that the ownership of a REITs may be shared with other shareholders who are not Muslims. Table 7.5.3.1 indicates that there should not be any problem theologically with non-Muslims owning *waqf* but the problem is currently AMLA which was only created for the Muslims and not non-Muslims as well("Administration of Muslim Law Act," 1999)[282] . Hence, all these issues need to be settled out if the REITs are to be structured as *waqf* REITs. Interviewee 9 is concerned about the *shari'ah* issues in terms of ownership in REITs. For the case of 11 Beach Road, the part ownership of the property in terms of share ownership is not an issue as this has even been a practice by some of the *waqf*. The *waqf* of Hj Meera Hussain is one such example; the *waqf* owns only half of the share of the said property. While legally and under *shari'ah* law there is no problem, there are problems in terms of operations. Due to the half-ownership issue there can be a problem when there are decisions to be made

[282] Amla Cap.3 ,definition of *waqf*. Definition of waqf was elaborated in Chapter 2 of this thesis.

on the property, where there is undue delay in the development if the other owner is not willing to approve any development or to contribute financially in developing the property. Because of this, the *waqf* has not been able to be developed and there has been a long period of non-tenancy. Interviewee 1 is concerned about Muis, the statutory board going into foreign ownership issues by buying properties overseas.[283]

Interviewee 10 mentioned that they may lose control of the *waqf* REITs because these shares are floating on the stock exchange and may therefore pose many risks associated with stock even where fundamentally the performance of the assets are strong. In terms of ownership where it is computed on a percentage basis, this may be diluted as the REITs goes into bigger acquisition of the properties.

Interviewee 9, on the other hand, raised concerns about *shari'ah* issues. The *shari'ah* issues in *waqf* REITs involve the following:

(i) Ownership

Depending on the REITs' structure, if it is going to be a fully *waqf* REITs, then ownership will be computed on the shares attributed to the value that each owner put in. Dilution will happen when the size of the REITs grows through issuance of more shares into the market to acquire more assets. The idea of direct ownership is not an issue as a *waqf* can exist in any form be it in cash, in property or in shares of a company that is perpetual in nature. However, a company may cease to exist if it goes into liquidation or it goes into negative equity. The same will happen in terms of share-holding where the shares have no value. However, if the company gets into difficulties, but there is still value in the assets, it can transform into another company or there can be a takeover or sale of the assets, which may not necessarily render the *waqf* to cease to exist. For property, the property will cease to exist upon acquisition or sale however there are compensation money or value attached to it. For property even in cases of natural disaster only the value of the building will be eroded. However, it is very unlikely that the land will also be lost. Hence property in terms of land has a higher perpetual feature. Therefore there is no issue whether it is movable or immovable properties as defined by AMLA("Administration of Muslim Law Act," 1999).[284]

[283] Muis can own or buy overseas properties however, such purchases must be approved by the Minister and a provision in the AMLA must be clear that overseas purchases can be effected.
[284] Definition of waqf in AMLA.

Interviewee 1 mentioned that there may be jurisprudential issues pertaining to ownership. The focus coding and analysis on the ownership issue, is therefore discussed in this section. See the focus coding on non-Muslim ownership under *shari'ah* issues in Table 7.5.3.1.

Table 7.5.3.1: Answers to Question 6(*shari'ah*)

Question 6	What is your opinion on non-Muslim creating *waqf*?
Focused Coding	
1	There is no issue in *shari'ah* and it should be allowed
2	The AMLA is created for Muslims and technically for non-Muslims they have the Trust Act to follow.
Theme	Generally there are no *shari'ah* issue. The issue is whether it is appropriate to be implemented in Singapore

Table 7.5.3.2 illustrates the responses from the interviewees on the appropriateness of non-Muslims creating a *waqf*.

Table 7.5.3.2: Focus coding no.1 for Question 6 (*shari'ah*)

There are no issues in *shari'ah* and it should be allowed	
Interviewee 4	The AMLA is for the Muslims, but there is no harm for non-Muslims to create *waqf*.
Interviewee 5	There is no *shari'ah* issue for a Muslim to create *waqf*
Interviewee 6	A non-Muslim can create *waqf*

In the literature review in Chapter 2 of this thesis, it is noted that a country like Kuwait and even Malaysia[285] allow non-Muslims to create *waqf*. In Singapore, the AMLA specify that only Muslims can create *waqf*. Therefore when asked about the *shari'ah* issues, all interviewee agreed that there are no obstacles for a non-Muslim to create *waqf*. This can be attested by the acts of some Jews during the prophet's time where properties were bequeathed by them for charitable purposes.[286] Therefore, from the *shari'ah* perspective it is not an issue for non-Muslims to create *waqf*. In fact it should be encouraged as this philanthropic act is good for the *waqf* and the Muslim community. In the case of the AMLA, it was created for Muslims only. Therefore it does not cover for the non-Muslims.

[285] Please see chap. 4 of page 14 of the thesis.
[286] Refer to Chapter 2 page 15.

Table 7.5.3.3: Focus coding number 2 for Question 6 (*shari'ah*)

The AMLA is created for Muslims and technically non-Muslims have the trust act they need to follow	
Interviewee 13	AMLA is for the Muslims for the non- Muslims they have the trust act to follow
Interviewee 17	AMLA is created for the Muslims only
Interviewee 16	AMLA is for the Muslims only

This is the further analysis of focus coding 2, where it is emphasised that the AMLA is created for the Muslims only and interviewee 13 reiterated that for the non-Muslims they have the Trust Act to conform with.

(ii) *Using waqf premises for non-halal/haram activities.*

This is a non-issue as prior agreement on the usage of the property is always made. Since it is an Islamic REITs all the issues pertaining to *shari'ah* compliance will be taken care of even on financing.

(iii) *Sale and purchase of the properties*

Since a *waqf* can be converted in the form of cash, the most important element to note is that the value of the shareholding should not diminish. It must increase in value. This is where if the property is a *waqf* property, there could be an issue in disposing the assets. Disposal can be made in the form of leasehold instead of an outright freehold sale. [287] Even on a freehold sale, this can still be affected by using the tools of *istibdal*. This means the proceeds must be used to purchase another property of the same or higher value.[288]

7.7.4 Pricing, confident and concentration risks

The next focus coding on the problems of structuring REITs for *waqf* assets is that of pricing, confidence and concentration risks. Table7.5.4 below illustrates the analysis.

[287] See chapter 3 for the traditional used of lease and the modern used of lease for waqf development.
[288] See chapter 4 of this thesis on the conditions for using *Istibdal.*

Table 7.5.4: Focused coding number 4 for Question 1(contemporary instrument used for financing *waqf* development)

Pricing, confidence and concentration risks	
Interviewee 7	There will be greater risks in putting all the *waqf* property in one basket.
Interviewee 9	There will be price volatility since pricing is now transparent
Interviewee 10	The shares are floating in the stock exchange it will be exposed to speculative element and hence unnecessary price fluctuations.
Interviewee 18	Problem with IPO the value may go up or down, hence there will be valuation fluctuation which may be due to speculative reason. Confidence level will be affected when market are not performing
Interviewee 25	The REITs prices may fluctuate according to shares and not necessarily according to the property market and this may include speculative element. Confidence level for Muis to go into such venture is not particularly high as it is a Muslim institution in the eyes of the public although it is a statutory board constitutionally.

These are some of the concerns associated with the issuance of REITs for *waqf* assets. If REITs are floated on the market, price fluctuation and speculation are inevitable. As in many stock markets, price fluctuation does not mirror the actual value of the property. Speculation can cause the value of the assets to either be over-valued or under-valued.

Interviewee 7 is concerned that if all the *waqf* are put into a REITs structure because there is a need to put substantial properties into one, then there will be a concentration risk meaning all the *waqf* are placed in one basket and there will be no diversification of assets. The *waqf* is now dependent on the performance of the REITs.

7.8 Advantages of structuring *waqf* assets into REITs

The next focus coding question is 'What are the advantages of creating a REITs for *waqf* properties?' The answers are presented in table 7.6 below:

Table 7.6: Answers to Question 2(contemporary instruments used for financing *waqf* development)

Question 2	What are the advantages in creating a REITs for *waqf* properties?
Focus Coding	
1	Liquidity and flexibility
2	Still have management control of assets although they have been partially sold by the management team
3	Expand our expertise by going global, strengthened the Warees and Muis position internationally
4	It reduces the location, tenancy and financial risk of existing *waqf* properties
5	Provides new growth for stagnant *waqf* properties
6	Tax incentives such as waiver of stamp duty for transfers of Singapore properties
Theme	Liquidity, management control, strengthened global positioning of *waqf* management, reduces location, tenancy and financial risk, provides new growth and tax incentives for the initial set up.

The following section provides further coding for each of the focus coding identified in Table 7.6.

7.8.1. Liquidity and flexibility

Table 7.6.1: Focused coding Number 1 for Question 2(contemporary instrument used for financing *waqf* development)

Liquidity and flexibility	
Interviewee 7	Although the underlying assets are illiquid, the shares in REITs are liquid thus provides quick changes in the assets type and hence enables greater flexibility and better risk management.
Interviewee 8	Easy selling of shares
Interviewee 9	Can redeem share of REITs easily
Interviewee 10	Easy withdrawal of your share in REITs
Interviewee 18	It provides you with cash to buy new assets easily.
Interviewee 19	To unlock your assets and buy into other investments and assets. Public REITs provide liquidity because of its relatively easy entry and exit structure as compared to physical properties however lesser liquidity for closed REITs.
Interviewee 25	Another way of unlocking your assets and diversifying it.

The findings above are no different from any company wanting to turn its property assets into a REITs as the advantages are the same. For *waqf* properties these are factors which are deemed beneficial for *awqaf* to be structured as a REITs.

Most of the interviewees responded that with a REITs there is an option of a fast and economic exit strategy. The current holding of physical assets makes the *waqf* inflexible and will not be able to make the strategic investment decisions in moving the assets quickly.

The problem with the traditional ownership of property is that it lacks the liquidity and flexibility for easy disposal. Once the asset is bought it will not be very easy to be disposed off, unlike a REITs where the transfer of ownership is very easy. It provides not only easy exit but also easy and affordable entry (Garrigan & Parsons, 1997). The minimum amount to buy a share in a REITs is $1,000. Hence it will be easier to raise fund from the public via such a venture(SGX, 2009). This is also a way to raise funds for *waqf* through the Muslim community via buying the share in a REITs. Hence, not only can the *waqf* assets be expanded, it will also provide another philanthropic tool which has not been popularised of late due to the out of reach property prices for most of the people.[289]

A case in kind is the *Waqf* of MSE Angullia. This particular *waqf* has a property to share ratio of 60:40. In perusing the *waqf* accounts it was discovered that the *waqf* placement in shares accounts for a 90% placement in a REITs share.[290] This shows that even for *waqf* investments the tendency to invest in property is high for less than 10%[291] is invested in other than property shares. The *waqf* has actually moved towards investment in properties but through a shareholding in REITs.

The *waqf* which has placed its assets in a REITs, can now have easy exit; and liquidity if it seeks to create more opportunity or diversification of its assets base. However, it should be noted that while this is an attractive feature of a REITs, the nature of a *waqf* is not actually to create high liquidity. It should be noted the actual intention of a *waqf* is to give a steady stream of income to the beneficiaries.

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[289] Property price in Dawson Ave is about $2100 psf . This is in sub-urban area. A normal middle class worker in Singapore cannot afford a landed property let alone bequeath it as *waqf*. 80% of Singaporeans live in an HDB flat which is part of the government housing scheme. The number of Muslims living in private property is even lower, so it is not practical to create a *waqf* in Singapore based on the traditional bequeathing of a single asset.
ST Jan 5, 2010 – Private home prices surge 7.3%. Prices of private property continue to rise and have shown new high.

[290] Most of the REITs holdings are in the local REITs in Singapore such as First REIT, MMP, REIT, Frasers Commercial Trust (Formerly Allco REIT), Mcarthur Cook Reit. Based on the accounts of Waqf MSE Angullia for the year ended 31 Dec 2008.

[291] Figure is based on the accounts of Waqf MSE Anggullia- Clause 7 for the year ended 31 Dec 2008. Shares invested in conventional banks and other local companies such as SPH and SBS shares. The conventional banks shares are less than 3%. There is currently no restriction on *waqf* to invest in non-*shari'ah* compliant products however usually it is placed in stocks which have no *shari'ah* issues.

However, since the market situation has changed, in order to create superior income, liquidity and flexible assets management tends to be one of the criteria.

7.8.2 Allow management control of long-leased assets

After discussing the REITs as a potential contemporary tool, this section analyse the coding number 2 on the management control of long-leased assets, the result of which is presented in Table 7.6.2.

Table 7.6.2: Focused coding number 2 for Question 2(Contemporary Instrument used for financing *waqf* development)

Still have some management control of assets although they have been partially sold.	
Interviewee 7	Active management of property although ownership has been diluted.
Interviewee 10	Lose control in the management of REITs.
Interviewee 19	For normal property it is an outright sale but for REITs although your assets are sold you still have management control of it.
Interviewee 25	You can have a higher share to have better control and management of REITs

Although part of the assets have been sold and diluted by participating in a REITs, the advantage is that if the assets are large enough and if there is a huge shareholding in it, the *waqf* trustees can be part of the management team. This provides the possibilities of having more say in the management of the *waqf*. As can be seen in table 7.6.2, interview 10 thinks that there will be a loss of control as the entity does not report to Muis entirely. However, if Muis is part of the management team, then this concern could be minimised. It should be noted that on the issue of management control it depends on the way the company is structured.

7.8.3 Expansion and globalisation of *waqf* assets and expertise.

Table 7.6.3 gives a further breakdown of the answers for the need of the *waqf* assets and the expertise on *waqf* management to be expanded and to go global.

Table 7.6.3: Focused coding Number 3 for Question 2(contemporary instrument used for financing *waqf* development)

Expand our expertise by going global, strengthen the Warees and Muis position internationally	
Interviewee 7	Increase Warees expertise by partnering with a major property player.
Interviewee 10	This is definitely one of the ways in going global for *waqf*.
Interviewee 19	To make REITS viable you need to have global participation. Hence this will expand the expertise further for Warees and Muis.
Interviewee 25	It will have a shorter learning curve for Warees and it helps to penetrate the Middle–East market and hence bring *Waqf* to the global arena.

On the internationalisation and globalisation dimension, according to interviewee 19, the size of our *waqf* is too small for a viable REITs structure although it is still possible to go into one. Global participation is necessary to make the REITs more attractive and rooms for growth. However, he gave a note of caution that it is not easy to undertake a cross-border REITs especially in the area of *waqf*, because of the many issues in terms of legal, cultural and religious differences practised in other countries. As *waqf* properties can be very sensitive, it is therefore a daunting task to overcome all these issues. However, other interviewees were more optimistic. They think it is necessary for Muis to go to the next phase of development. Interviewees 25 and 10 also share the same aspiration to go global in the development and management of our *waqf* assets. Muis together with Warees have a lot to offer in terms of management, administration and development expertise, which can be replicated in other countries with *waqf* asset potential.

Table 7.6.3.1 shows support for this view. It depicts the development phase that Muis has undertaken in its *waqf* development. Almost all the *waqf* assets have been developed, and there is really very little manoeuvring that Muis can exercise in creating the next development phase for its *awqaf* properties. Table 7.6.3.1 shows the phase of development that Muis has undertaken.

Table 7.6.3.1: Major phase of w*aqf* development

Year	Description of *waqf* development	Financial size of the development and types of financing undertaken
1990s	Development of Wakaf Jabbar involves the development of 4 units of 3-storey terrace houses in Duku Road.	Sale of 2 units of terrace houses to finance the development of the other 2 units. Approximate development cost for the 4 units is about SGD$2 million
	Redevelopment of shophouses of *Waqf* Ghaffoor, *Waqf* Jamae, and many other *waqf* with shophouses	Internal financing by *Bait-ul-mal* through loan given by *Bait-ul-mal* and the charging of a fee for the advance termed as opportunity cost. Total advance estimated at $15,000,000.
	Waqf Kassim a bigger development, involving a mosque, 4- storey commercial complex and 20 units of residential apartments.	Internal financing through *Bait-ul-mal*. The 40 units of maisonette were sold on 99-year leases and the net proceeds of about $15 million were used to finance the mosque and the commercial complex. Profit sharing is through the 5 units of maisonette apartments allocated to Muis.
2000	Asset migration exercise undertaken involving 24 *awqaf* and the purchase of a single building at 11 Beach Road.	The purchase price of the building was $32 million raised through the issuance of the *musharakah* bond. This is necessary as the *waqf* will take time to dispose of the assets. The 5-year programme was initiated so that ample time is given for the properties to be migrated.
2002	Another major redevelopment involving the property at Chancery Road was undertaken. This was another 33 units of cluster housing, previously 6 units of bungalow houses giving a rental of $200,000 a year . *Waqf* retain 2 units of the cluster housing for rental. The net proceeds from the development was given to the *waqf* to invest in other free-hold properties.[292]	The investment to develop the properties was done through a joint venture with Warees Investments Pte Ltd. The profits from the project are being divided according to the share of the investment. For *waqf*, the land is being valued and hence the ratio of the profit yield from the development is apportioned accordingly.

[292] Refer to the notes to the accounts No. 23 of *Waqf* Financial Reports 2007 of which the following notes are extracted " In Dec 2003 , Wakaf YAL Saif Charity Trust ("WA9") entered into a joint-development operation with WAREES Land Pte Ltd, to develop 34 units of cluster housing on a parcel of freehold land with a gross land area of approximately 6,615 square metres located at Chancery Lane (the "development properties"). The development properties are being sold on a 99-year lease term with WA9 granting a 99-year lease for the land to the related company in consideration of a share in the profits from the sale of the development properties based on terms of agreement between WA9 and the related company. The related company will bear the development, selling and marketing costs. The development obtained a Temporary Occupation Permit ("TOP") on December 27, 2006."

Year	Description of *waqf* development	Financial size of the development and types of financing undertaken
2004	Development of Madrasah Al- Maarif Al-Islamiah[293], where a swap was done with another *waqf* property.[294] The location identified for the new madrasah belongs to another *waqf* . The madrasah needs to be developed and hence the proceeds from the sale of the properties are needed to rebuild the *madrasah*.	The financing is through the sale of the land at Ipoh lane on a freehold title and switch to another *waqf* land belonging to a different *waqf* for a freehold title as well. The exercise has resulted in the madrasah being able to finance its development without resorting to any kind of loan, while the *waqf* which sold its land will find an alternative site from the proceeds.
2007	Development of properties through a long-lease of 10 years for the properties at North Bridge Road belonging to *Waqf* Raja Siti Kraeng Chanda Pulih.	Warees Investments undertook the development at North Bridge Road and hence act as the head lease for the *waqf*. All development costs, maintenance and upkeep of the properties will be undertaken by Warees during the lease period. This is similar to the ancient practice of *hukr*. The difference is that the lease period is shorter and there is absolutely no indication of ownership.

There are, however, a few more properties that need to go through some developments. These are shop-houses and small-scale projects. In essence, all the *waqf* properties have undergone major redevelopment. The next major task is to identify the earlier properties which have been developed and which will need major redevelopment after some time in the future. Hence, the financing needs for these *waqf* should be planned long in advance for the redevelopment needs. With the escalating and inflationary costs of development there should be a long term solution to help the *waqf* retain its perpetuity status.

7.8.4 REITs reduces location, tenancy and financial risk

The other factors that were raised on the advantages of REITs are presented in Table 7.6.4.

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293 Madrasah Al- Maarif Al- Islamiah is a full-time all girls *madrasah* situated at 14 Ipoh Lane now relocated at No. 3 Lor 39 Geylang. The *waqf* is the Waqf of Shaikh Omar bin Abdullah Bamadhaj WA/94.

294 The property at No.3 Lorong 39 Geylang Road belongs to the Waqf of Valibhoy Adamjee Rajbhai.

Table 7.6.4: Focused coding Number 4 for Question 2(contemporary instrument used for financing *waqf* development)

REITs reduces the location, tenancy and financial risk of existing *waqf* properties	
Interviewee 7	In terms of location risk, it takes a lot of time to sell off a property by the time it's been realised the price may be at a disadvantage. In terms of tenancy risk, if the place suddenly suffers a drop in tenancy demand, or any upgrading works needed then tenancy will be suffered. For financial risk if there is a debt recoverability issue for a particular tenant the full burden of the financial write off is posed on the particular *waqf*.
Interviewee 19	REITs reduces the tenancy risk for *waqf* as the property will be better managed by an expert team
Interviewee 25	The advantages for the *waqf* in terms of tenancy management will be obvious as there is a team to manage the tenant professionally. The transparent management of REITs will result in the management team to push for greater return as now there are shareholders stake involved.

In a REITs structure there will be a team that will manage the rental and tenant mix in the development. Bad debts from *waqf* tenants are higher as compared to property managed by REITs managers. For FY 2008, the *waqf* accounts showed 5.8% of bad debts written off.[295] In the case of professionally managed REITs, for example A-REITs, the bad debt provision is only about 0.06%. In terms of rental returns, the *awqaf* are yielding a rental income of about 3.4%[296] whereas REITs yielded 12.4% in FY2009.[297]

Although this is not a comprehensive comparable assessment due to the nature of property that is being held, it shows that REITs managers with their high accountability and pool of experts are able to deliver stable returns even in an economic downturn. Hence based on the above interviews, all the participants agreed that in terms of REITs there are many ways that managers will try to reduce bad debts and increase yields. Table 7.6.4.1 juxtaposes the revenue, yield and occupancy rates

[295] Based on Muis *waqf* accounts 2008 Notes 7, an amount of SGD$601,787 of total write-off is declared out of the total gross income of SGD$13,175,269 (notes 20 of FY 2008 *waqf* accounts) which is 5.8%.

[296] The amount is computed based on FY 2008 rental income of SGD$10,323,692(Notes 20 of FY 2008 *waqf* account) over the investment property of SGD$316,157,500 (see notes 13 of FY 2008 *wakaf* accounts)

[297] The A-REITs figure is based on A-REITS annual report 2009 accessed via http://info.sgx.com/ on 18 Aug 2009.

of *waqf*- managed properties and the two selected REITs portfolios. The two particular REITs figures are based on the largest REITs and the smallest REITs portfolio and different properties mixed.

The following comparison is tabled out for REITs as compared to *waqf*-managed assets.

Table 7.6.4.1: Comparison of yield, gross revenue and occupancy rates of Singapore *waqf* and REITs

	Waqf portfolio[298]	A-REITs portfolio[299]	First REITs portfolio[300]	Remarks
Gross revenue growth year-on –year %	11.84%	23.0%	12.2%	
Yield (income and capital)	3.4%	12.4%	8.8%[301]	
Occupancy rates	90%	97.8%	100%	100% occupancy rate as rented by the hospitals and health care centre for an average period of 12.5 years

Based on the strategies identified in Table 7.6.4.1, it should be possible to achieve a 100% tenant occupancy rates on the long-leases taken, especially for business entities such as hospitals and hotels. This is also true for the Somerset Bencoolen property, a 10- year lease that this will ensure 100% rental received for the service apartment. The North Bridge Road properties are also another example where a long lease has been undertaken.[302] This will mean a guaranteed cash flow for the *waqf* according to the duration of the lease.

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[298] Based on *Waqf* Annual Report FY 2008, and based on *waqf* rental reports.
[299] Based on A-REITs Annual Report FY 2008/2009 (financial year ends in Mar 2009)
[300] First Real Estate Investment Trust deals with hospital properties; it is the smallest REITs in terms of its assets value. The two REITs are tabled out to show the different between the largest to the smallest REITs and to have a fair comparison for the *waqf.* In terms of asset size, First REITs is a better comparison for the waqf as compared to A- REITs. However in terms of the tenant mix and the REITs assets, the A- REITs mixture of commercial lproperties is a good comparison.
[301] 8.8% is based on gross revenue of SGD$30,178/339,547 (Total Assets). Figures extracted from First Real Estate Investment Trust Annual Report 2008 assessed through http://www.sgx.scom/wps/portal/marketplace/ on 21 Aug 2009.
[302] Waqf Raja Siti Kraeng Chanda Pulih. A lease of 15 years was signed between Warees Investments Pte ltd and the *waqf*.

7.8.5 Provision of new growth for stagnant *waqf* properties

Table 7.6.5 illustrates the breakdown of the answers from the various respondents.

Table 7.6.5: Focused coding Number 5 for Question 3(contemporary instrument used for financing *waqf* development)

Provides new growth for the stagnant *waqf* properties	
Interviewee 7	Current holding structure does not promote growth, with REITs it provides the avenue for growth.
Interviewee 19	In management of REITs you need quality assets for growth potential
Interviewee 25	Whether it is *waqf* properties or any other commercial properties, REITs provides an option to diversify your portfolio and hence provides new growth in your current property portfolio.

Interviewee 19 said that one of the important essentials of REITs management is that the portfolio must have sufficient quality assets for the potential to grow. He reiterated that growth is important as investors seek returns. However interviewee 7 thinks that the manner in which *waqf* assets are managed does not provide the opportunity to grow. It is based on traditional property holdings. However, in the Singapore experience, many methods have been tried and incorporated to maximise portfolio earnings. However, the management of REITs, is a wholly new way of managing properties.

Some views *Waqf* assets as sacred and hence leverage on the existing properties to acquire more properties is not something that can be easily tolerated or accepted. Traditionally *waqf* properties have been managed on a very inactive manner. In contrast, REITs are managed actively in the hope that the portfolio will outperform in terms of capital and income yield. This active management strategy is demonstrated by A-REITs in Table 7.6.5.1.

Table 7.6.5.1: A-REITs portfolio management strategies

Capital and Risk Management	Proactive Asset Management	Value Adding Investments
• Equity funding • Debt funding • Interest rate risk management • Cost of capital	• Portfolio positioning and strategies • Supervise execution of asset management activities	• Yield accretive acquisitions • Built-to suit projects • Development

Source: A-REITs annual report 2009

As can be seen from Table 7.6.5.1, REITs managers have a plethora of strategies that can be adopted. In FY2009 alone, A-REITs have managed to acquire a building and business park for SGD$271.8 million(A-REITs, 2009). This is a huge acquisition. If a *waqf* were to adopt the same strategy, it would have to raise enough funds and to acquire properties and allow it to grow. However, a *waqf* has limited strategies because it has limited quality assets and cannot leverage on its existing assets or extend additional borrowings for acquisition purposes or an asset enhancement programme. Most *waqf* properties are in shop-houses, but there are other quality assets which can be identified for REITs such as the one at 11 Beach Road and the Somerset Bencoolen service apartments. Apart from these apartments there is very little manoeuvring of assets that can be done to achieve a higher potential apart from redevelopment.

Going a step further in using REITs as another avenue in asset management for *waqf* properties may involve implications in the way *waqf* are traditionally managed. This can open new ways and touch on fundamental *waqf* issues that may be rejected by some *shari'ah* scholars as well as the *waqf* authorities in certain countries.

7.8.6 Tax incentives

While earlier answers mentioned that there is no tax advantage because a *waqf* is not taxable, the following response mentioned that there is still a tax advantage to be reaped in a REITs structure which is listed in Table 7.6.6.

Table 7.6.6: Focused coding Number 6 for Question 2(contemporary instrument used for financing *waqf* development)

Tax incentives	
Interviewee 17	Tax incentives such as waiver of stamp duty for transfers of Singapore properties

The earlier interviews stated that a *waqf* already enjoys a tax-free status on its income so this is not something that will incentivise people to go in for REITs. The only incentive that they will enjoy is the waiver of stamp duty for transfers of

Singapore properties since they falls into the REITs structure.[303]As a precautionary note, this may not hold true for properties outside Singapore which may be subject to the particular country's own REITs and property regulations. Currently, all *awqaf* properties are subject to property tax and stamp duty tax. If a REITs structure is adopted and the *waqf* is exempt from such taxes, this will allow for more incentives for *awqaf* to adopt such structure. Notwithstanding the current tax status of the *waqf* in respect of stamp duty and property tax, a case may be put forth to the tax authority to waive the tax status of *waqf* properties in order to encourage and attract the philanthropic activities in Singapore. The tax status of *awqaf* was only cleared by the tax authority in 2004.[304]

7.9 Conclusion

This chapter has attempted to analyse the issues relating to the investing and financing of *waqf* assets in Singapore through the perceptions and opinions of the participants who were the various stakeholders. In addition, since there is a strong inclination to invest in property for Singapore *waqf*; the research aims to provide an alternative investment of *waqf* assets using the structure of REITs. The interview analysis, therefore, aimed at identifying the thinking of people involved in *waqf* management on whether such tools can be accepted and whether they are plausible.

In any endowment or trusts fund outfit, an investment committee with clear investment strategies and objectives are important pre-requisites towards a successful management of the assets. It is detrimental to manage assets without having a clear policy and guidelines on the investment framework. It is therefore important that there should at least be a *waqf* investment committee. However, the findings revealed that while there used to be an investment committee there are none at present, nor is there any current policy on the investment of *waqf* assets.

In view of the absence of such a committee and any investment framework for *waqf* assets, the question that needs to be answered is what is suitable for *waqf* investments. Most of the interviewees agreed that *waqf* investment objectives and

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[303] MAS guidelines accessed through http:www.mas.gov.sg. on 1st Sep 2010.

[304] Waqf tax status was not determined until year 2004, where the tax status of waqf was given the exemption by the Inland Revenue Authority of Singapore. Prior to that a provision for income tax was created, by the year 2004 a provision of $2 million was recorded for the provision as stated in Muis Annual Report , Waqf Funds in FY2004.

strategies should be safe and not risky and should have a capital-preservation element and be *shari'ah*-compliant.

After deciding on the investment objectives of *awqaf*, the next level would be to devise some sort of asset allocation strategy for *waqf*, akin to the investment strategies in the Kuwait *Awqaf* foundation where there is a different asset allocation strategy in place.[305] As for Muis, 90% of its investments are property based. The findings suggest that the asset allocation strategy should predominantly be in properties with regular income and only a very small percentage of total assets should be put in stock and shares which are relatively safe and secure. While this may be the current view of managing *waqf* assets, the inclination to place in property is still very strong; and even where there are cash *waqf* investment it is still being invested in properties for example in the investment of the property at 11 Beach Road and in shares in REITs.

To shift the paradigm of investment from a property base to shares and other forms of contemporary and efficient investments, for example direct investments in capital or venture capital, and plausibly in other areas than property, will require more time to convince investors that shares do perform as well. However, with the recent financial crisis, it has become an increasingly daunting task to convince the decision-makers to allocate *waqf* assets in shares. As in the Nuffield study, since *waqf* has a perpetuity status, the investment can be more aggressive as it can offset the risk in the investment cycle[306](Nuffield, 5 Mar 2007). In the current climate with the financial meltdown after the collapse of the Lehman Brothers in September 2007, investments, which are more aggressive, have been the root cause of the disaster. For example, the Yale endowment with its more exotic selection of stocks based on a more aggressive investment strategy is now facing the consequences. Last year the big endowments such as Yale and Harvard reported a huge decline in their earnings of more than 30%.[307]This has further aggravated the fears in all sectors to adjust investment strategies. Hence investments such as derivatives and other exotic investments have been shunned.

However, for *waqf* the added criteria of *shari'ah*-compliant investments have become very important. These criteria, have somehow allowed some cushioning

[305] See Table 7.4.1.1
[306] See table 4.5 of page 99.
[307] Harvard, Yale are big losers in 'The Game' of Investing. Accessed through http://online.wsj.com on 1st sep 2010.

effect for some shares not to be placed in high-risk instruments. Instruments like derivatives are not permissible in Islam. Hence, *shari'ah*-compliant instruments which are supposed to be based on sound financial investment criteria have become more important not only for the sake of religion[308] but, more importantly, because they represent good, sound ethical investment strategies which will ensure the perpetuity status of the *waqf* and the adequate income stream needed for the beneficiaries. There are, however, limited *shari'ah* compliant investments available in Singapore. But, the lack of supply will make it less attractive for waqf to create a heavy asset allocation on shares and stocks.

Therefore, since the inclination of *waqf* management is to invest in property-based assets, in the traditional manner, the next probable structuring should concern the Real Estate Investment Trust. This is a unique vehicle of owning property via shared ownership in the trust. However, this is an investment vehicle which is new at least for *waqf* assets and the findings reveal that structuring *waqf* assets via REITs, requires a large pool of quality assets, besides tax advantage status. Nor can we ignore the ownership issue and *shari'ah* compliant investments. These are also pre-requisite.

The findings reveal that there are several advantages of *waqf* going into the REITs structure. These are liquidity, management control, strengthened global positioning of *waqf* management, reduced location, tenancy and financial risk, new growth and tax incentives for the initial set-up.

These advantages have been analysed at great length in this chapter and the study has revealed that there are substantial advantages that can be derived from the REITs structure. However, these issues and others should be addressed and tackled so as not to dilute the institution of *waqf*.

Going forward with the findings and analysis, recommendations of investment strategies and objectives, and the use of modified REITs as one of the instruments to manage *waqf* assets are presented in the penultimate chapter. In addition, the findings on, administration, management, legal and *shari'ah* issues as discussed in the earlier

[308] The researcher mentioned here 'mere religious sense' because many scholars argue on the ritualistic nature of Islam without looking at the core religious actualisation of the injunction inherent in those injunctions. For example the abstaining of liquor for the Muslims is not just abstaining of the liquor because God has forbidden the liquor but because it has the element of intoxication which can render the person to be in a state of unconsciousness. Hence any intoxicating or to be in a state of unable to control the mind such as taking drugs is forbidden in Islam. So the essence is of bodily harm to the person consuming it and also affecting the community as a whole.

chapter, will be incorporated in the recommendations on policy changes, legal provisions and the gaps in the administration and development of *waqf* assets.

Chapter 8: Contextualising the findings by proposing a modified *waqf* management structure and a new model of financing and managing *waqf* assets.

8.1 Introduction

Based on the empirical analysis presented earlier, this chapter aims to highlight and propose certain policy recommendations with respect to the management, development, financing and investments of *waqf* assets. In other words, the findings from the research so far are utilised in this chapter to propose an alternative management and financing method for *awqaf* in Singapore.

The discussion on the proposed modified management structure, hence, is presented in two parts. The first part will highlight the policy recommendations to further enhance and support the management of *waqf* assets and the investment and financing strategies adopted; The second part will detail the proposed *waqf*- REITs structure.

8.2 Recommendations on the findings

The research revealed a number of important findings, which have been utilised to propose policy recommendations in order to affect change in the overall enhancement of *waqf* management system. The recommendations, are presented in the following sections and based on the thematic order to give the same flow and thought process used in the research.

8.2.1 Administration and management

The findings revealed that, the factors that contribute to the successful management of *waqf* assets must contain the elements of innovation and creativity, highly talented and passionate people with strong leadership and a great vision and a deft attitude towards risk. In addition good governance and a legal framework with progressive fatwa and easy access to finance are important requisites.

i) Innovation and creativity in *waqf* management and development

Some of the examples cited as innovation and creativity in development and management include the asset migration exercise or the tools of *istibdal* in enhancing the *waqf* assets. Others include using long leases such as 99-year leaseholds. To further expand the *waqf* base, the acquisition of new assets locally and globally is an option. Another most important tool is the injection of new funds. The following recommendations are extracted from the analysis of the institution.

- *Istibdal*

As the discussion indicated in the previous chapters, there should be a limit to the number of *istibdal* used. Guidelines and rules on its usage should be incorporated in the AMLA.

- 99-year leaseholds

Consideration has been given that no *waqf* should be sold on a freehold basis but on a 99-year leasehold. The merits of such an exercise were discussed at great length in Chapter 6. This position is very clear from the opinions of the participants as discussed in Chapter 7.

- Creation of *waqf* shares and cash *waqf* to acquire more properties locally and overseas.

To expand the *waqf* further such innovation is necessary. Currently no new *waqf* has been created, so there is an urgent need to start this scheme. However, in order to do this effectively, the issues of manpower and legal provision must be settled.

ii) Human Capital

The findings also suggest that there is an urgent need for human capital development, and for an efficient development and management of *waqf* system in Singapore. Indeed, the innovative strategies that have been described in this study will not be sufficient if the human resource element is neglected.

Based on the findings, this study strongly recommends increasing the manpower base and creating a dedicated department to deal with *waqf* management, development, and the regulatory framework. While there is already an existing corporate arm to look at the affairs of the *waqf* which Muis manages directly, the corporate arm can do even more to include other related functions. The corporate entity, Warees Investments Pte Ltd; can expand its scope to include *waqf* investment and the marketing of new *waqf* funds. In this way, only regulatory work and policy formulation will reside in Muis. This will support the functions needed by the *waqf* department to promote greater and faster growth of *waqf* assets.

Appropriately skilled staff, the necessary skill sets, a deft attitude towards risk and the vision to see *waqf* professionally managed in the next phase needs to be emphasised. This is where the separate institutionalisation role of Muis should be mentioned, as Warees Investments Pte Ltd was formed to focus on the commercial function of the *waqf* and allow *awqaf* to embark on more innovative and aggressive asset management strategies. Such independence and decision-making processes are based on sound business decisions, which can only be attained if Muis serves as an independent body regulating *waqf* affairs. Similarly, this can only be achieved, if *waqf* follows the same regulatory process and system like the trust.

iii) Legal and good governance issues

Governance issues are very important due to the fact that Singapore's reputation as a country with high governance standing augurs well for its *waqf* management. Governance issues that need to be improved or even enhanced are stated in the following policy recommendations;

a) Creation of *waqf* committee;
b) Separation of roles between the President of Muis and the Chairman of the Council;
c) Creation of an internal audit committee;
d) Strengthening and adding legal provisions to protect and enhance the institution of *waqf*;
e) A yearly beneficiaries' statement.

a) Creation/ activation of *waqf* committee

It is important that a *waqf* committee be established to decide on *waqf* matters before they are tabled at the Muis Council. The *waqf* committee can facilitate many decision- making processes and policy formulations with respect to *waqf*. A separate committee on *waqf* investment can also be established so that proper investment and policy formulation can be effected. Without this establishment, the matter has to rest at the departmental level unless at that level there is an adequate group which can perceive, highlight and resolved them. The *waqf* committee can comprise council members and experts in the different areas. In the Malaysian context, since the Majlis is the sole trustee, a *Wakaf* Management Committee was established to administer and manage all *waqf* in the state of Selangor, this committee is created under the Act. Singapore may not want to go via this route as this will entail the further constriction of *waqf* activities at the *Majlis* level, the idea is to actually create a structure that will promote the growth of *waqf*. However, in the absence of such structure the establishment of the *waqf* committee is necessary. Currently, there are established *waqf* committee for the disbursement function.

b) Separation of role between the President of Muis and the Chairman of the council.

As part of achieving a good governance structure in relation to the Singapore standards but also according to Islamic principles of management, the separation of role between the President of Muis and the Chairman of the Council is an essential recommendation. It should, however, be noted that with respect to this policy recommendations, Muis has taken steps to effect this changes, that is Bills have been passed but the changes to the Act has not been effected yet.

c) Creation of an internal audit committee

To ensure a robust governance structure, it is essential that an internal audit committee should be established, which will be ideal. However, the problem is that there will be additional costs, such as the need to invest in more manpower and time to do this. The issue of manpower needs to be tackled before this can be implemented.

d) Strengthening and adding legal provisions to protect and enhance the institution of *waqf*

The current legal provision governing the institution of *waqf* in Singapore provides very limited scope. In order to protect and enhance the institution of *waqf*, there must be adequate legal provisions. Although most interviewees perceive this an impediment, legal structures are usually set up to facilitate and not to circumvent growth. So that new *waqif* or people who wants to create a *waqf* in Singapore are comfortable with the law and have faith in the regulatory system. They recognise there is a strong regulatory and governance framework existing in the institution.

Table 8.1. shows some of the proposed additions and changes recommended for AMLA regarding the legal framework. This is not a complete list, but nonetheless it is based on the findings revealed in the earlier analysis chapter, where it

was argued that a separate *waqf* law should be established. This would be ideal if one were to cover a comprehensive list of the activities of *waqf*.

Table : 8.1: Recommended changes to the current *waqf* legislative provisions

Legal Provisions	Current Act	Proposed Additions/ Changes	Remarks
1. Definition of *waqf* • *Waqif* • Types of *waqf*	• *Waqif*- confined to Muslims only • *waqf khas* and *am*.	• To include non-Muslims to participate in the act of *waqf*. • Include waqif to be a corporate body • To include the types of *waqf* to go beyond *waqf khas* and *am*. May need to expand the types of *waqf* in a separate section. To include say *waqf muabbad*. Allow for temporary *waqf* with conditions.	
2. Assets of *waqf* (*mauqoof*) only mentioned as immovable and movable properties	none	May need to be more detailed; for example assets should not have any encumbrances, be unrestrained and capable of yielding usufruct. Assets can have the non-perpetuity features, say a minimum period of 10 years. Assets must be of halal use.	
3. Formation of *waqf* There is no provision currently on the creation of *waqf*	none	There must be proper provision for the creation of *waqf* for example who can create *waqf*? What age is appropriate, how can the *waqf* be created. Say for example is there a need to have witnesses or for the creation of a will and the need for this to be registered.	
3. Development of *Waqf* Currently there is no provision at all on the manner *waqf* can be developed and the fatwa committee opinion has to be sought for each development.	none	There should be provisions for: • The sale of *waqf* properties • I*stibdal* • Mortgage of *waqf* properties and the conditions that can be allowed. • Provision for borrowings • Provision for financing. • Use of properties to be *shari'ah* compliant. • Guidelines for lease	

Legal Provisions	Current Act	Proposed Additions/ Changes	Remarks
5.Investment of *waqf* assets	• None –	• Creation of investment committee • Identify investment strategies and objectives • Stipulate *shari'ah* compliant assets	However, by virtue of Muis being a statutory board it needs to invest according to the Trustee Act and guidelines set by its parent Ministry. This may not be in line with the *waqf* investment requirement.
6. Establishment of *waqf* committee	Currently only disbursement committee is active	• Committee can decide on matters such as disbursement policies, investment policies, development policies and other matters related to *waqf*	

e) Yearly beneficiary statement

As part of the good governance structure, a yearly beneficiaries' statement from the beneficiaries should be made. Currently some beneficiaries present some proof of receipts. There are other cases where agents are used. They have to be trusted as in some cases it is impossible to obtain any kind of receipts. However, there must be proof that the recipient of the money has, in one way or another provide some proof of receipt. There is a need to improve the disbursement function, to ensure greater accountability and that the beneficiaries' needs are met. Visits to the relevant places and institution of beneficiaries should be made. Private trustees, like SMA Alsagoff, visit the foreign beneficiaries for example in Hadramaut on a bi-annual basis. However costs must be considered to balance the governance requirements in order to carry out such activities.

Since *waqf* operates under a statutory board institution in Singapore, the transparency and governance issues are very rigorous as the *waqf* needs to follow the Singapore government's accounting and procurement procedures and other ethical guidelines issued by it. For example, the accounts are audited and follow strict compliance with Singapore accounting standards. Procurement and other financial processes and procedures need to be complied with the government instruction manual (IM).

Muis has moved towards a more inclusive and transparent system where yearly disbursement affairs are conducted and reported in the local newspapers, and private trustees and beneficiaries are invited to witness the disbursement ceremony. This will not only enhance transparency but also allow public education of its *waqf* administration to the public at large. The above are only additional recommendations to further strengthen the institution of *waqf*. However, Muis has put in a lot of effort in constantly strengthening the area of corporate governance. It has even embarked on a Singapore Excellence journey[309] to ensure that a holistic approach to ensuring all stakeholders' needs is met.

While many financing options are presented and discussed which are *shari'ah* compliant, the pertinent issues that should be addressed are the legal framework and *shari'ah* issues besetting *waqf* managers. If there are limited opinions and an unwavering position on the *shari'ah* issues then there would be limited development for the next phase of *waqf*. Currently, based on findings conducted by a research in UTM, there are several modes of financing *waqf* in Malaysia and examples of the various methods of financing *waqf* are discussed in Chapter 3. Notwithstanding this there are still few financial instruments used in the development of *waqf* assets.

8.2.2 ***Shari'ah* and the legal framework**

As the analysis in the previous chapters and the discussions so far indicate, the only way for enhanced investment and development is to have the support of progressive *shari'ah* interpretations, which is by progressive fatwa and supportive legal provisions.

Shari'ah interpretation varies between *mazhabs*, countries and culture and the fatwa in Singapore has always looked upon a pragmatic approach. But it holds to Islamic principles when arriving at decisions. For *shari'ah* issues on *waqf*, it can be more flexible as *waqf* is not an obligatory *ibadah*.

In summary, the following are the findings of fatwa and *shari'ah* positions taken in respect of *awqaf* in Singapore.

(a) Istibdal is allowed as long as it is for the good of the *waqf*, but *ibdal* is not recommended;

[309] See footnote 159 of Chapter 4 - on Service Excellence journey through the Singapore Quality Class.

(b) Generally, 99-year leases are allowed as long as there are measures to ensure that the property is not lost;

(c) *Awqaf* is allowed to borrow as long as it does not impose any undue risk to the *waqf* in the long term;

(d) *Awqaf* should be permanent and perpetual;

(e) Non-Muslims can also create *waqf;*

(f) Waqf assets should be placed in *shari'ah* compliant assets;

(g) *Waqf* assets cannot be mortgaged

For items in a,b,c,e,f and g, the provisions should be incorporated in AMLA and are stated in Table 8.1.

On the issue of mortgages and charges for *waqf* properties, it may cause problem for the development if a mortgage is disallowed. Nevertheless, this can be overcome by exercising the following method:

(a) By having an underlying charge of 99 years on the property;

(b) By mortgaging/charges on the cash flow which can be done on a proportional basis, say 70% of the cash flow is charged;

(c) By getting another entity to guarantee development, as in the Singapore case, Muis, as a statutory board and having other assets-backing, can provide the necessary guarantees or collaterals required for financing. Although most of the interviewees agreed on the perpetuity nature of *waqf*, the researcher tends to agree with interviewee 4's opinion that temporality in *waqf* should be allowed but duration may need to be defined.

While trust has progressed towards longer tenures, recent amendments have allowed them to be created for a maximum of 100 years. Previously the maximum duration allowed was 30 years.[310] If the perpetuity criteria still become a strong determinant factor on the characteristics of *waqf*, then a step forward to separate the intention and the object which is the *waqf* is thus important. Therefore, where the property which is bequeathed has a leasehold life of 40 years, it can be converted to a *waqf* fund and hence allow the *waqf* to continue to serve its *waqif* intention of, say, feeding the poor by putting in a *waqf* fund which can be managed on a permanent basis. Consequently, it is important that perpetuity is confined to the intention, whereas the object, which is the property, can be converted to allow it to last as long

[310] Singapore Trustees Act Cap 337 . Accessed through http://statutes.agc.gov.sg on 2 Mar 2010.

as possible. This will depend a lot on the professional management of the Trustee to enhance and allow the revenue to grow and last as long as possible.

It is also recommended that temporary *waqf* should be allowed in which, the temporal nature refers to the creation of a *waqf* for a limited time period. However, the amount that is to be *waqf* should be substantial and able to benefit the community and whatever else is viable to be administered. As long as it can serve a certain function for the benefit of the Muslim community, this restriction should be lifted. By lifting this criterion, it is able to expand the assets of the *waqf* further.

On the issue of borrowing, it is recommended that a policy be drawn up to limit the amount of borrowing for each *waqf* which looks at the risk-return and the affordability of the *waqf* to repay itself.

8.2.3 Investment guidelines for *waqf* assets

In any endowment fund, the growth and sustainability of the fund depends on the investment decisions and the application of the investible assets. Therefore, in order for *waqf* assets to meet a certain benchmark, and a sustainable income for its beneficiaries, and work within the requirement of the wills, there should be clear investment objectives and frameworks to work on.

8.2.3.1 Creating an investment committee to set investment strategies and objectives

Findings reveal that there is currently no investment strategy on the investment of *waqf* assets. They also reveal that benchmarks are set based on market rental and yields are set based on a percentage growth. However, in a conventional endowment such as the Harvard or Yale endowment, the TUCS[311] benchmark is used to measure the performance of the assets. There is no investment committee; hence, it is advisable that a committee be set up to draw out all the investment strategy, the policy, objectives, plan, asset allocation and benchmarking criteria.

8.2.3.2 Asset allocation strategies

Analysis reveals that most *waqf* assets in Singapore are in property. The interview conducted also affirmed that *waqf* administrator in Singapore are more comfortable to invest in property compare to stock and shares. However,

[311] Chapter 7 see note 16 for explanation of TUCS.

conventional asset management strategies for many endowment funds such as Harvard and Yale emphasised on diversification of its investments. Even countries like Kuwait Awqaf allocated almost half of its assets in equity forms and the same goes with Harvard[312] while NUS Endowment Fund allocated 60% to 85% on equity (Kong, 2006).

Therefore in order to balance both the requirement of the administrator and managing risk and maximising yield for the *awqaf*, creating a REITs would be an option. It has both the characteristics of investing in property and the nature of shares.

Another possible option is to allow for *waqf* assets to be in the form of cash as suggested by Magda and Shaik Abu Bakar (Magda, 2009; Shaik Abu Bakar, 2004). This is to set up a cash *waqf* system where the amount can be invested in other forms of assets and not necessarily be in property based (Magda, 2009; Shaik Abu Bakar, 2004). However, with the recent financial crisis in 2009, Kong, the chief investment officer of the NUS Endowment Fund reported that all equities will now be placed in longer term investments (Xiang, 2009). The high equity ratio on the NUS investment policy is to hedge against inflation. Thus, with a clear investment policy, managers can focus better on the manner in which assets are managed.

8.2.3.3 *Shari'ah* compliant investments

One of the important criteria in the investment of *waqf* assets is *shari'ah* compliance. This applies for all investment management and development of *waqf* assets. The propensity to invest in property is also the result of the shortage of *shari'ah* compliant products for *awqaf* to invest in. For example, it is well-known that fixed income investments can give stable long-term returns for distribution to beneficiaries. However, there are almost no options available currently for *shari'ah*-compliant fixed income and to move towards an equity and cash-based investment will be more daunting as the portfolio will be exposed to higher risk.

In the Singapore context, *awqaf* are still investing in non-*shari'ah* investments as there are currently limited other investment opportunities for *waqf*. Hence, the need to create *shari'ah* compliant-products is very important, and efforts need to be made to move away from the non-*shari'ah*-compliant products, even though there is still scepticism and very limited knowledge of other Islamic finance products. This

[312] See chapter 7 table 7.4.1.1.

has therefore prompted new innovations such as *Sukuk* and now the possibility of REITs and reassessing the cash *waqf* proposals. The promotion of a *waqf* hub in Singapore will provide the avenue to create more Islamic financial products to cater for the thriving *waqf* hub in Singapore.

From the various interviews with the respondents, both with the *shari'ah* and the investment group, there appears to be a lack of knowledge on this particular issue. The nuances projected are that all the interviewees agreed that *riba* is prohibited. However when the talk came down to organisational directions opinions changed. There was still substantial support for investment and financing to be still in interest-based transactions.

Nevertheless, the issue can be dealt with by having the right attitude towards the issue of *riba*. Awareness at both the organisational level and the public level must be heightened. The study carried out by Gerrad and Cunningham (1997) revealed that the awareness level of Muslims in Singapore towards *riba* is at a very low level.

It is therefore important for a *shari'ah*-compliant fixed-income instrument to be available to support this investment policy. Without this property will dominate most of the *waqf* assets. Juxtaposed with the Trustees Act, under the Standard Investment Criteria, Sect. 5(2), a trustee must review the investments of the trust from time to time according to the standard investment criteria of which mentioned is made in Sect 5(3) (b) of the Trustees Act about the need for the diversification of investments. Thus, the Trustees Act, emphasises the importance of diversification in the investments of its assets. For a *waqf*, apart from creating its own fixed income instrument via the issuance of *sukuk* for financing the development of *waqf* assets, the proliferation of such *shari'ah*-compliant fixed-income instruments will increase if there is higher demand for them and hence it will facilitate the investment diversification of the *waqf's* portfolio.

The investment policy and guidelines will also determine the growth versus the distribution policy. The findings reveal that some of the *awqaf* capital has decreased in value over the years, due to the lack of clear policy guideline on their *waqf* funds. For example, with regard to strategic capital growth, how necessary is it to ensure sustainability? Should the capital grow, say, by the inflation rate? Capital is eroded due to expenses exceeding income due to major development undertaken by the *waqf*. Thus, in such cases, what should be the policy to ensure that capital is not eroding? What is the loan quantum that *waqf* can undertake? While there are no *shari'ah* issues on the loan amount that a *waqf* can undertake, the decision on the loan quantum will still need to be based on the ability of the *waqf* to repay. A policy should therefore be devised to fix the quantum of loan that a *waqf* can undertake, based on say the repayment period. As capital preservation is a mandatory pre-requisite, the policy must be drawn to prevent the *waqf* from suffering any capital erosion. However, if capital erosion is only based on a paper valuation of the property, this should be allowed, but a principle should be established not to allow for any actual erosion of capital on the *waqf*. This principle was also emphasised in the fatwa.[313]

8.2.3.4 *Shari'ah* compliant financing of *waqf*

In chapter 3, a detailed literature study and case analysis of the various types of financing were presented. There are currently various financing methods that are utilised to finance the development of *waqf*. To recapitulate the various methods that were discussed in Chapter 3 for the financing of *waqf* properties are presented below;

- *Musharakah*
- *Mudharabah*
- *Ijarah and Ijarah with long lease*
- *Murabahah*
- *Saham Wakaf*
- *Sukuk- musharakah/ intifa'a /ijarah*
- *Bait-ul-mal /*benevolent loan
- *Istibdal*
- REITs

From the examples presented in Chapter 3, it is recommended that the current internal loans as practiced by Muis *Bait-ul-mal* account in charging interest to the *waqf* fund should be changed to a partnership or a joint venture or even made on an *ijarah* basis. For example, the outstanding loan to *Waqf* Jamae could be converted to equity participation instead, even though the development has taken place. It is still not too late to rectify the situation by creating a contract between *Bait-ul-mal* and *waqf*.

[313] See fatwa on capital preservation in Chapter 7, footnote no.245.

The idea of charging a benevolent loan to the *waqf* is more difficult as Muis-*Bait-ul-mal* have other responsibilities to carry out which also require substantial financing.

It is also important to create a sinking fund of about 10% annually of the *waqf* gross income so that cost for future maintenance and repair has already been allocated and therefore borrowings will not be necessary. This must be incorporated in the *waqf* policy.

Extra funds for the *waqf* can be obtained by creating new sources. One possible method, which was discussed in the analysis in Chapter 7, was to create a *waqf*-REITs approach, which is further discussed in the following section.

8.3 *Waqf* REITs a new frontier in the financing and development of *waqf*

Based on the findings discussed earlier, there may be merit for *waqf* in participating in the REITs structure, although there are problems and difficulties that the *waqf* might face as was highlighted in the analysis chapter. Reference should also be made to chapter 3 where many types of REITs structure were presented; which implies that the best way to structure *waqf*- REITs has yet to be decided upon. In reaching this decision the inputs gathered from the semi-structured interviews as presented earlier should be taken into account: e.g. the existing or modified legal and management frameworks and the various policy and organisational changes to support the ideal REITs structure for *waqf*.

Before discussing the basic structuring and recommendations of a *waqf*-REITs, the following section presents the factors that need to be considered.

8.4 Consideration of structuring *waqf* assets under REITs.

Based on the interviews, as discussed in the preceding chapters, there are several issues which need to be considered when structuring a *waqf*-REITs, which are depicted in Table 8.2.

Table 8.2: Consideration for *waqf*-REITs

1	Assets	• Tenure - Freehold/leasehold • *Halal* activities • Quality • alienability, sale ,transfer and purchase
2	Ownership	• Muslims or non-muslims • transferability
3	Management Style	• Direct involvement • Indirect involvement
4	Competitiveness	• yield and cost
5	Tax	• tax advantage
6	Investors concerned	• Risk and return

Source: Author's own

8.4.1 Assets

There are several factors that need to be considered on the assets of the waqf when structuring *waqf*-REITs.

i) *Tenure of assets*

The first inherent feature of a *waqf* is that the capital should be in perpetuity. The earlier discussion presented the permissibility of a *waqf's* assets being sold on a leasehold basis with no issue concerning *istibdal*. Therefore to circumvent the issues of inalienability, a sale through leasehold can be done. However, when a *waqf* enters into a REITs structure, its ownership and capital are transformed to shares held within the REITs. Therefore, the assets are no longer represented as assets of the *waqf*, but have been transformed to the ownership title in the REITs company which will be comprised of some of the *waqf* 's assets but along with other assets as well. For example *waqf* A may have assets in location X and *waqf* B may have assets in location Y. Therefore *awqaf* A and B will now hold joint ownership of the collective assets in both location X and location Y. It is therefore immaterial whether the properties are freehold or leasehold as long as the REITs is created in perpetuity. Even where there is a need for liquidation and the REITs needs to be dissolved, the value of the shares will be transferred back to the original owners. In this case, the traditional ownership of a *waqf* owning a particular asset will no longer hold.

ii) *Halal* activities

The next important factor is to ensure is that since *waqf* assets have been placed in a particular structure and that the *waqf* owns the share in the REITs then naturally all the income from the properties should be from *halal* sources. This is where in the I- REITs structure discussed in Chapter 3, the Malaysia Securities Commission requires that rental incomes must be permissible according to *shari'ah* principles. However if the existing tenant has a mixed activities the computation is that the non-permissible activities should not exceed more than 20% (SAC, 2005). However, for a *waqf* -REITs the criteria should be more stringent and not to allow for any non-permissible activities. The *Shari'ah* advisory council of the Malaysia Securities Commission listed investment in hotels as one of the non-permissible activities [SAC,2005]. On the other hand, Muis has developed a service apartment, allows short-term stays which mimic the activities of a hotel. In the Middle-East hotels are not considered as a non-permissible activity because they are used as lodgings and with its strict *shari'ah* regime to ensure that only *mahram* can utilise the same room; the issue is therefore not similar.

iii) Quality

Concerned was raised in the findings chapter where interviewees mentioned the adequate supply of quality *waqf*-assets. This can be overcome if there are trans-border REITs structures where other countries with high quality *waqf* assets are willing to participate in this vehicle. To rely on Singapore *waqf* assets will not be suffice[314] or may limit REITs assets and hence affect yield and performance later. Another option is to raise new assets through the cash-*waqf* system.

iv) Alienability, sales, transfers and purchases

The alienability issues should be able to be tackled through the act of *istibdal* and long-lease. Within a REITs structure, the REITs manager is able to acquire properties which, according to the I-REITs guidelines, must be at least in accordance with the *shari'ah* principles discussed earlier (SAC, 2005).

[314] Typically REITs will need to have a minimum amount of S$250 million to be workable- according to UOB REITs consultant based on interview conducted.

8.4.2. Ownership

i) Faith of the investors

Muslims and non-Muslims both can own and participate in *waqf*-REITs. The level of ownership varies as it depends on the type of investor and investment. For example it can have various types of investors; investor A is a *waqf* investor, investor B is just a normal investor participating in a *waqf*-REITs. Therefore it does not matter and it boils down to how it wants its shareholders to be structured. And as in any investment, shareholders do change hands and again there is no control if, let us say, a *waqf* owner *wants to* liquidate its share to a non-*waqf* owner. In other countries which were cited earlier in chapter 2, for example, Kuwait allows for non-Muslims to create a *waqf* and so does Malaysia. In the earlier section, under the recommendations on legal provisions, it was recommended that Singapore should also adopt the same provisions to allow more people to create a *waqf*, similar to a trust where a person's faith is not a deterrent to create one.

ii) Transferability of ownership.

There is no difficulty in transferring the ownership of shares in *waqf*-REITs. This was discussed above in relation to the faith of the investors; currently it is the practice that a *waqf* property is sold on a lease. The leasehold owners can sell to anybody they want except where the original *waqf* owner has put a covenant forbidding the change of use of the properties to be non-*shari'ah* compliant. However, in REITs this feature is greatly protected as the REITs will have its guideline which in essence can be stricter than Islamic REITs since assets are derived from a *waqf* and thus the *waqf* institution serves as a shareholder as well.

8.4.3 Management style

i) Direct or indirect involvement

There are various styles that the *waqf* can use in the structuring of REITs. It can have a direct involvement or an indirect involvement in the REITs structure. The current administration employs managers and *mutawalli*s to administer the *waqf*. The same arrangement will apply to a REITs structure. In a REITs structure the sponsor will sit as a trustee for the REITs. Hence there will be representation in the REITs entity. To have more control over the REITs, there are other options to consider that is either to have a close REITs structure verses a public REITs structure. However, in Singapore, there is no option for a closed REITs structure. In order to do that a fund which managed directly in the investment in properties can be an option. Increasingly too, REITs have now managed most of its internal services such as development, tenancy matters and managing of the properties directly instead of using a third party to reduce costs. And if the trustees of a *waqf* sit in the trustee of the REITs there will be more control in the manner that the management is conducted.

In a typical *waqf* managed set-up, the development and many of the services are commissioned to a third party as this is cheaper than doing them in house as the administrator will definitely not have the same competitive edge as a specialist development or marketing company in managing the assets.

8.4.4 Costs and competitiveness

i) Costs

Will costs render the creation of a REITs to be unattractive? The cost of structuring REITs can be very expensive, especially if it is a Public REITs.[315] Total transaction costs can easily amount to 7% to 8% of the total issue(Deloitte & Touche, 2004). These are however initial costs, since REITs are structured to be long-term in nature and can be amortised over the years. There are however other benefits that can offset them. For example in Singapore there will be a 3% stamp duty tax on acquiring assets. However, if the *waqf* acquires assets through REITs there will be no stamp duty costs.[316] This will in fact automatically reduce by 3% the costs of the transaction.

ii) Competitiveness

From the above return that was projected in the *waqf* portfolio, the total return on the *waqf* portfolio gives a yield of 3.1% as compared to the REITs yield return of

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[315] The cost of converting properties to a REITs can be very expensive. This is the guide provided in the 8th Edition of Deloitte and Touche on the transaction costs. These are ;

- Underwriter fees- 5-6% of the total dollar value of the public offering
- Legal fees for counsel – US$600,000 to $1.2 million depends on the size and complexity of the issue
- Legal fees for underwriters' counsel – between USD$250,000 to $600,000 , again depends on the size and complexity of issues
- Audit fees
- Accountant ,legal for tax advisory services
- Appraisals , Phase 1 , environmental reports and engineering reports(US$200,000 to $300,000)
- Printing and translation cost.

[316] MAS circular issued on 28 Feb 2005 Remission of stamp duty - stamp duty on the sale of any immovable Singapore property or any interest therein to a REIT will be waived where the REIT is already listed on the Singapore Exchange (SGX) or will be listed on the SGX within a month from the date of completion of the sale agreement. Circulars can be accessed through the website: http://www.mas.gov.sg/

3.71%(Young, 2007). The other assets class for example, government bonds, gives a return of 3.1%.

Although REITs are not set for capital appreciation but more for income yield, on a one-year return over the stock exchange, S-REITs have recorded in average over the 2007 period a 72.89% increase in value (Young, 2007). In total this is an attractive investment vehicle and will suite the *waqf* portfolio as a *waqf* needs to keep pace with the demand of its beneficiaries; hence its capital expansion concept needs to be considered.

8.4.5 Tax

Will there be a tax disadvantage for *awqaf* as investors in REITs? *Waqf* income is not taxable so by structuring it under REITs, does not create any advantages on the tax structure. There is no disadvantage either as any dividend received which is taxed at source can be claimed back under IRAS.[317] However the REITs, as a company will be taxable and since the *waqf* remains as a shareholder and not as a manager, in this case Warees or any other company will be the management and the tax implication will be similar to the current arrangement where Warees is also taxable as a company.

8.4.6 Investors concerned

Will investors be attracted to the REITs concept for *waqf* properties? Investors will look for returns. As long as the properties can give the desired return with an acceptable risk level, investors will be interested. Moreover, this is a *shari'ah*-compliant asset, which will appeal to the Muslims as well and so a wider pool of investors can be anticipated.

8.4.6.1 *Waqf* as investors or supplier of assets

In the following section the various options of how the *waqf* can participate in the REITs structure will be discussed. The *waqf* can participate as investors meaning having shareholdings in the REITs or it can just choose to lease out its *waqf* properties in the REITs or it can be both as a shareholder and a supplier to the assets in the REITs structure. Before looking into the direct participation of the *waqf* into the

[317] Based on the case done for many other *waqf*, such as YAL Saif Charity Trust and MSE Angullia Trust where the dividend income is tax at source and this can be claimed later through IRAS (Inland Revenue Authority of Singapore) as *waqf* falls under income which is not taxable.

various structures in REITs, it is important to also understand the various types of REITs and which types will suite best for *waqf.*

8.5 Types of REITs

Besides, the guiding principles and concerns which were highlighted in the previous section, the next issue to consider is what type of REITs will then be suitable for waqf?

i) Equity or Mortgage REITs?

An equity REITs will suit a *waqf* REITs as it is based purely on income – generating real estate. This involves basically leasing, development of real properties and tenant services. These fit the current activities for *waqf* properties and will therefore not be appropriate for incorporating into mortgage-REITs or even a hybrid REITs (see Chapter 3).

ii) Public or Private REITs?

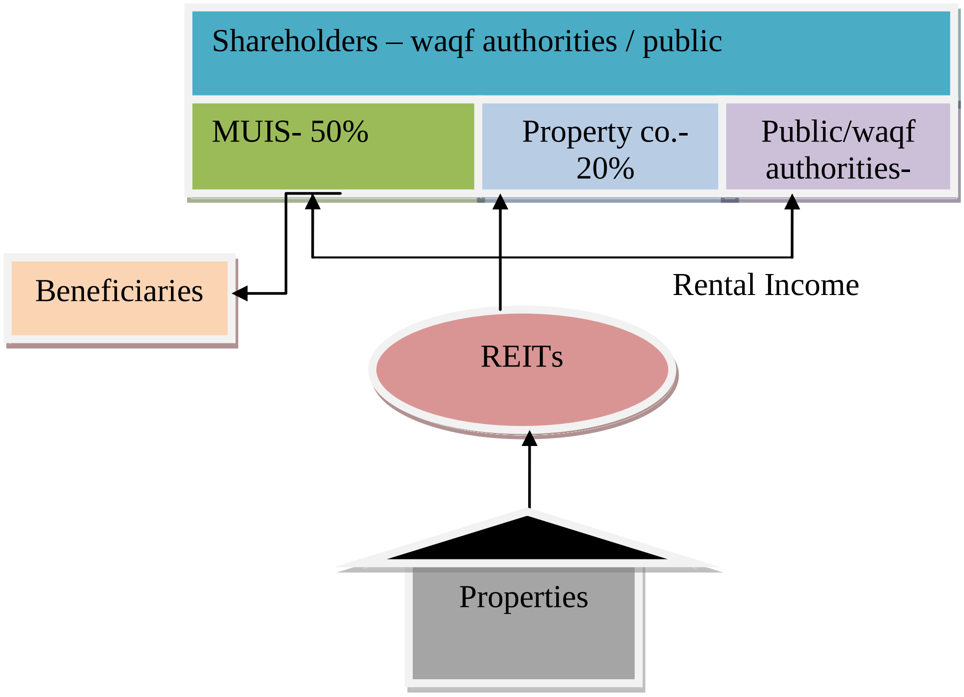
Since this is a pioneer attempt for a *waqf*-REITs, a private REITs would be a better option as compared to a public REITs structure. This view is also supported by the interviewee who has had years of experience in structuring REITs. According to him it will be in the best interests of the *waqf* to go into a private REITs or a fund like structure to manage the *waqf* funds. As mentioned earlier in this chapter, there is currently no closed REITs or private REITs offered in Singapore, therefore a fund structure may need to be created first before the next step of floating it as public REITs became an option. As Chan, Su Han *et.al* (2003:263) cautioned, on the public capital market "only the fittest REITs with dynamic management styles will receive attention and favourable consideration from financial analysts and REIT investors".

The next question is then how should the REITs be structured in terms of its ownership and participation from the other investors and how should it be managed? The recommendations for this are discussed in the following section.

8.4.2 Proposed shareholdings in *Waqf* REITs

Based on the ideas developed so far, the following REITs structure can be proposed, which also identifies the proposed parties to the REITs, exhibit 8.1 illustrates this:

Exhibit 8.1: Shareholdings in *waqf*-REITs



Based on this structure, the following section discusses the parties to the proposed REITs structure.

8.6.1 Shareholders

i) Muis

The shareholders can include Muis, which can be a combination of *waqf* properties putting into a REITs or *Bait-ul-mal* entity and the mosque investing into the REITs and becoming a shareholder. The percentage as illustrated in the diagram above may vary.

ii) Property company/ investment banker

Muis may want to partner an investment property company, for example, the experienced local property player who is more familiar with the management of REITs. The other way is partnering with an investment banker would also be worthwhile as Muis can groom its wholly-owned subsidiary, that is Warees Investment, to take on the property management part and leave the financial and financing activities to the banks. For example, Development Bank of Singapore (DBS) manages several REITs under its portfolio. However, in the structure depicted in Exhibit 8.4.2.1, the property company can also take a stake as a shareholder and ownership will thus be shared with the property company as well.

iii) Public /*waqf* authorities

Possible collaboration can be initiated with the *waqf* authorities the like of Malaysia, Kuwait or Indonesia. They can participate in the REITs by contributing and identifying the various *waqf* properties under their charge.

For the public it will be more difficult as this will mean that all the regulations and requirements of going IPO will need to be worked out. The public must also understand the nature and the restrictions on the management of the REITs as it will be an Islamic REITs and will have to comply with any *shari'ah* requirements in its financing and management of funds.

From the earlier findings, the interviews revealed that especially for a Singapore *waqf* to expand, its asset base has to go global if it wants to develop. This will also provide sizable assets which are important for reaping the advantages and full potential of REITs as reported in a comprehensive report by Ambrose and Linneman (2001). They found that large REITs have a significantly lower cost than small REITs. However, this argument can only hold true to a certain level of value after which the argument may not be sustainable. (Chan et al., 2003)

8.6.2. REITs as a company

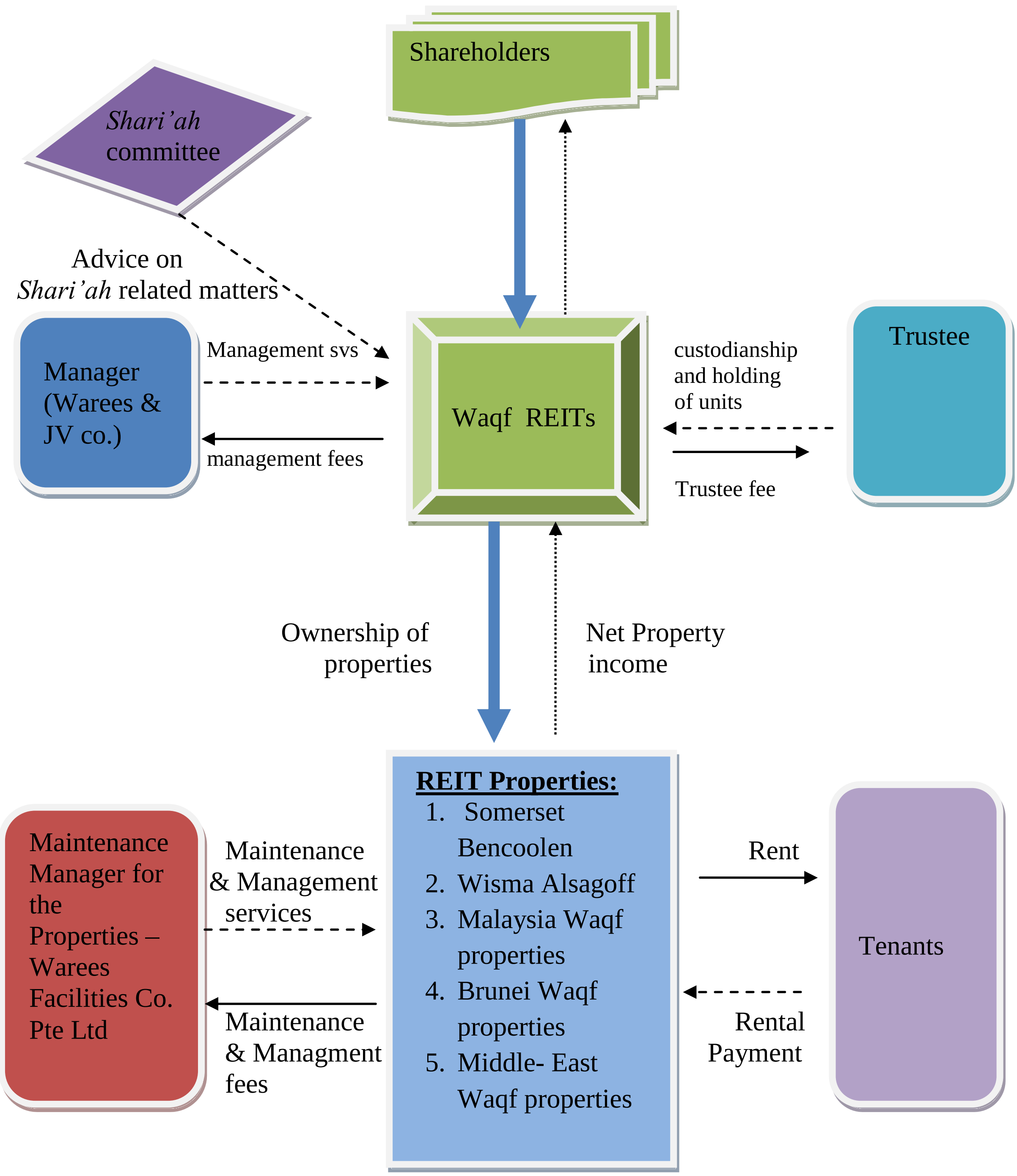
The REITs as a company has to comply with the requirement of the regulations found in the Singapore Stock Exchange (SGX) on REITs. However to ensure that there is the requisite expertise on the REITs board, it can be a co-managed company. An internal structure would be better as there is less chance of a clash in the management. However, a learning curve can be short- circuited if a seasoned and experienced property company is used to run the company.

8.6.3 Properties

Waqf properties can be placed in the REITs company in the form of leasehold properties. In this case the *waqf* will hold the freehold-title and lease the properties to the REITs company. The value of the properties can be reinvested as shareholder in the REITs or the *waqf* may want to monetize the assets and used it to invest elsewhere.

Therefore the *waqf* I- REITs structure proposed in Exhibit 8.2 is based on the standard I-REITs structure.

Exhibit 8.2: Proposed structure of *Waqf*- REITs.



Source: Standard I-REITs structure KPJ Abrar with modification on the properties and company.

8.7 Proposed *waqf*-REITs structure

It is an interesting structure where a *waqf* can embark on its next journey of a *shari'ah*-compliant structuring of its *waqf* assets, it is founded on the basic I-REITs structure. The following items in the REITs structure are discussed below:

i) Formation of a *shari'ah* committee

A *shari'ah* committee will be needed to advise the REITs manager on *shari'ah*-related matters. This will include the management of funds, the financing requirement and the asset management of the property.

ii) Asset management services

The asset management services can be created between Warees and another company formed as a JV or out of a service fee to be given to the Investment manager for consultancy and investment services.

iii) Property manager

The scope of services involves property management services of which Warees can also be a partner with a facilities and management company to provide all the facilities, maintenance and leasing services.

8.8 Guiding principles for a *waqf*- REITs

The following are the guiding principles in structuring a *waqf* REITs.

i) *Waqf* assets

The assets can be leased to the REITs structure on a long-lease basis as discussed in earlier chapters on using the instrument of long-lease.

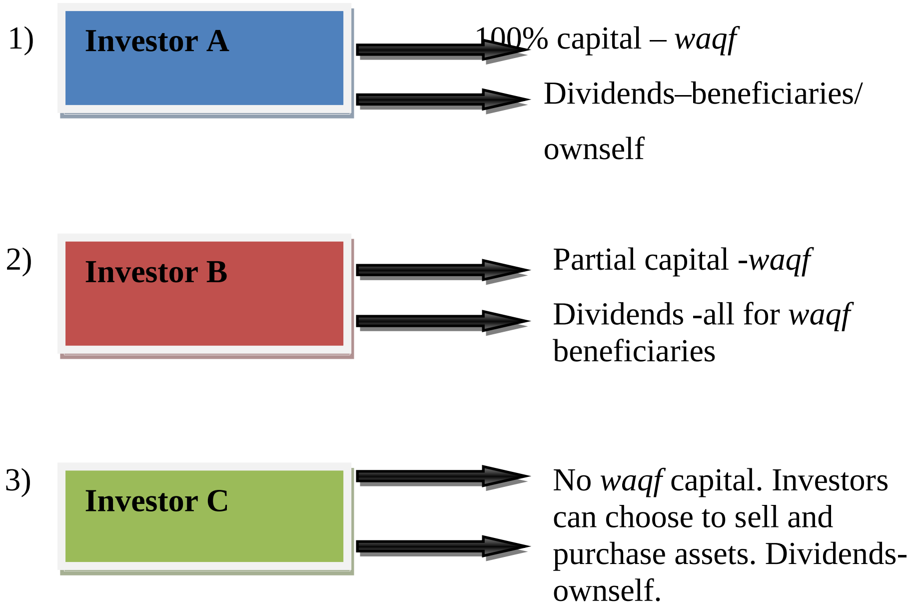
ii) Trustees

In this case the trustees can comprised the Muis board or a Muis-appointed company acting as a trustee.

iii) A *shari'ah* committee shall advise on the *shari'ah* compliancy of investments.

iv) Shareholders

The shareholders placed in a private arrangement will be easier to manage but there will be less liquidity as there will be limited number of shareholders. For overseas shareholders especially, the *waqf* authority, the regulations and law in each country must be scrutinised. If the REITs is launched with a public REITs profile what it can propose is having added inclusions to allow the conversion of the shares to a *waqf* where the capital will not be returned but capitalised in a REITs structure and the income can be channelled for the beneficiaries. This will entail a lot of administration, as the channelling of the dividend must be done properly. Nevertheless, it is an alternative way in managing the *awqaf* today. The three types of investors are illustrated below:



i) **Investor A**

In the case of investor A, the investor will be the *waqf* owner and assets which are capitalised will be 100% in the form of a *waqf*, therefore the investor will bring in the *waqf* assets in REITs. For example, the *waqf* Jamae will invest in its properties at South Bridge Road to be invested in REITs. Therefore the *waqf* will now be the shareholders and investors in that particular REITs structure. The properties can then be transferred in the form of long leases in the REITS. For new investors in this category, for example X,Y & Z who want to invest in this particular REITs , what they can do is to create a cash *waqf* scheme where the amount is raised outside the REITs structure to buy a property and the property is then invested in this REITs. Another option is to raise the funds through the issue of shares in a REITs, however, with the intention that the shares are treated as *waqf*. In this case, the amount invested in the REITs, would be capitalised and created as a *waqf* during the donor's lifetime or even after his death. The result of capital being created as *waqf* will result in less liquidity available for REITs if investors do not intend to liquidate. It will be administratively cumbersome and costly to administer small investors' requirements for creating a *waqf*. However, alternatively, this can be done by first raising a cash *waqf* for the cash to be invested in this fund. In this respect the shareholding will be created under a particular *waqf* fund and this fund will be used to invest in the REITs. In this manner the investor will come in as a collective investor under the particular *waqf* fund. To allow for sale of the properties, at the onset, the conditions stipulated in the *waqf* deed should allow for multiple *istibdal* to be effected for these assets.

ii) Investor B

This particular investor may want to *waqf* some of his capital and choose to give back the return as *waqf* as well. Or he may choose to give the dividend away partially into the *waqf* or for his own benefit. This will also entail many administrative hurdles. For such investors the *waqf* portion can be placed in a cash *waqf* fund and the non-*waqf* portion can be invested directly to the REITs fund.

iii) Investor C

This investor will just purchase the REITs under the market system through an IPO or as an institutional investor and would want to retain the whole return for himself. There is no *waqf* element for this type of investment.

Although there can be a hybrid of the three types of investors, the recommendations allow the hope of diversity for investors and the creation of a larger REITs.

v) Investment of funds

These will be the short-term funds and the liquidity requirement of a REITs structure. There must be sufficient instruments to invest in *shari'ah* compliant products. Where such instruments are not available in Singapore, the need to create them becomes all the more important and urgent. Without them the REITs will not be fully *shari'ah*-compliant.

8.9 *Waqf* REITs – is it a viable option?

In Chapter 3, the subject of REITs and the advantages of creating a *waqf* in a REITs form was discussed. However, other areas such as *shari'ah* issues need to be considered. The proposed scheme aims to bring about a different paradigm in the management of *awqaf* and the opportunity for small investors to participate in the creation of a *waqf* with only a small outlay. Hence the advantages of REITs would also be compatible with the assets of the *waqf*. However a note of caution must be taken into account when a *waqf* goes public, as the volatility of a REITs to jeopardise the value of the *waqf* assets is undesirable. As observations indicate, the market has proven that when stocks are placed on an IPO it is subject to many other market forces that are beyond its control. Hence, it is better if this is done as a private manner initially. Where there is no ownership of a *waqf* in a structure where the *waqf* gives an outright lease, then the idea of a public REITs can be created. REITs as alleged in the research can give a better yield and asset appreciation for a *waqf* compared to a more traditional management of its assets. Therefore, with proper regulation and professional management of its assets a *waqf* can give a better return on its assets if managed in this form. As reiterated earlier, to create this instrument the other aspects in the management of *waqf* assets must be strengthened. It is also important to research further how *awqaf are* operating in other countries in order to position a *waqf*-REITs as a cross-border *waqf*- REITs and benefit from the existing experiences.

8.10 Conclusion

This chapter started with the various recommendations based on the three broad areas of the findings chapters and has highlighted the pertinent features of the administration, the management structure of *waqf,* legislative provisions, *shari'ah* interpretations and the financing and investments recommendations. The final recommendation is in proposing the new method of managing a *waqf* using the concept of the REITs instrument to manage, invest and grow the *waqf* assets and increase the number of *waqf* contributors.

In recommending these proposals, there are a few key areas that need to be addressed. These are the assets of these REITs and the perpetuity issues which are discussed at great length under the *shari'ah* interpretations. Therefore, given the flexibility of REITs; it will be easier for them to be managed so that assets are not confined to freehold tenure only. Assets allowed in a temporal form will permit greater flexibility in the management of *waqf* REITs. The next factor is the availability of *shari'ah* compliant assets which must be made available. This is where the requirement to invest in a *shari'ah* compliant product is mandatory and such a product has to be made available. For example, there must be a *shari'ah*-money market product for the non-property assets to be placed in. Another factor to consider is, the ownership issues of a *waqf* are that if we limit the creation of a *waqf* to Muslims alone, then only Muslims can be type A or B REITs investors. This is because if an investors wishes to participate in the intentions of a *waqf* then he or she has to be either a type A or B investor. For the non-Muslims, to just participate in the REITs is not a problem, but they will not be able to participate in the intention of the *waqf*. There are many ways to structure a REITs. However, for ease of administration a REITs manager would want a simple structure so that administration will not be costly.

In the case of financing its development and acquisition of assets, a REITs is allowed to take out a 35% loan. Therefore this loan can be structured using the financing options that were discussed in Chapter 3. For example it can raise funds through the issuance of *sukuk*, it can enter into a joint-venture with the tenants or it can have a *sukuk intifa'a*[318] like time- sharing concepts for managing its assets. The availability of these financing options will allow the *waqf*-REITs to expand its REITs base or start a refurbishment program to give greater returns to its investors and shareholders.

The recommendations to allow for greater flexibility in the structuring of *waqf* assets will further distance Muis from being involved in the commercial function of participating in the REITs structure despite the earlier recommendations in this chapter for the involvement of Muis. This is because the recommendations wished to show the current state where ownership of all *waqf* properties lies administratively under Muis and therefore Muis would need to be involved in the shareholdings structure.

While professional management can bring about better yields, it is also important to be cautious that the *waqf's* interest and the beneficiaries' interests are protected. Therefore, it is imperative that in the investment and financing policy of

[318] See chapter 3 on examples of *waqf* using *sukuk intifa'a*

waqf, proper strategic planning and clear investment objectives are set through a committee who will provide the corporate governance entity in managing it to the best of its ability and integrity.

Where trust has thrived, it is therefore an opportune time that the management of *waqf* should be revisited and that gradual changes in the legislation, *shari'ah* interpretations and management and development initiatives, be made to allow the *waqf* concept to grow further.

It is also important for the realisation of these visions that adequate and capable personnel are adequately trained to bring about these suggestions and recommendations. In the concluding chapter, the limitations, the problems and the vision will be further discussed.

Chapter 9: Conclusion

9.1 Overview

The aim of this research has been to identify the various factors in adopting the contemporary *shari'ah* compliant structuring of *waqf* assets in Singapore. This has led the research to approach the various aspects in fulfilling these objectives, via the legal framework, the organisational structure, the *shari'ah* interpretation and, in addition, providing concrete applications from the management of *waqf* in Singapore and from the different *waqf* institutions in Malaysia and Kuwait.

In realising this aim, the methodology included using a literature review, a case study approach, semi-structured interviews, and other secondary sources. The experiences of other countries' management of their *awqaf*, have provided further depth to the study. The study investigated the three major areas which were covered in the findings chapter where a thematic approach was used to cluster the interviews. These are the administrative issues, the legal and *shari'ah* issues, and the financing and investment cluster.

In order to appreciate the contemporary modern management of *waqf*, an understanding of the theological limitations that inhibit the development of *waqf* had to be reconstructed albeit some of the opposing *shari'ah* positions and views that were presented in the findings and analysis chapter. The research also located huge gaps in the way trusts are managed *vis-a-vis waqf*. This has happened, because the institution of *waqf* has not been developed compared with the institution of trusts. It is, therefore, important to look at *waqf* holistically so that when structuring the assets these areas can be taken into account and will present fewer problems later. This can also be encapsulated further in the Singapore context by the welcoming speech made by Mr. Goh Chok Tong, as senior minister in the Singapore government, in the inaugural Singapore International *Awqaf* Conference held in March, 2007 where he mentioned that "the environment required to ensure the growth of *waqf* is similar to conventional charitable trusts. Singapore has established itself as a strong centre for the administration of charities and trusts. We have introduced several initiatives to make Singapore a conducive jurisdiction for trusts, a vehicle commonly used for philanthropic purposes. This includes measures to modernise our trust laws, update our regulatory framework... This will help Singapore to become a centre for the development of *waqf*' (Goh, 2007). Hence for Singapore to establish itself as a global hub for *waqf*, it has to take into account the total framework required to carry on such activities and probably to be further innovative in responding to the contemporary financial challenges and innovations faced by the *waqf* sector.

This chapter first reflects on the limitations of the research and any other issues that have come to light subsequent to the policy recommendations discussed in the penultimate chapters. To conclude, the chapter discusses the way forward in realising some of these recommendations.

9.2 Potential challenges in recommendations.

The findings and recommendations chapter discussed at great length factors that are needed in the *shari'ah* structuring of *waqf* assets, of which the financing and financial aspects of *waqf* are perceived to be an important challenge in these contemporary times. While recommendations have been put forward, the areas of concern and challenge that may be faced in carrying out these recommendations and proposals are listed in the following sections.

9.2.1 Attitudes toward risk

In the findings from the interview section, there was little relish for risk, as the key personnel were not willing to take the additional risks. This was attested when lower key personnel were being interviewed and when potential projects had to be shelved due to the risks involved. This attitude is not found in privately managed trusts for some of the trustees are very forward-looking in purchasing new properties for the *waqf* and some have even engaged in active share-trading.

This attitude, if continued may inhibit growth of the *waqf* institution. In the findings and analysis chapter, the researcher mentioned that the nature of statutory board institutions is normally risk-averse; the creation of a company such as Warees Investments Pte Ltd has provided the separate legal entity, so that risks can be cushioned at the company level. However, despite this the company decisions do not rest at the board level, decisions which involve the financing, selling and purchasing of properties will still need to be mandated at Muis Council level. This layer of decision-making has created a bureaucracy and requires Muis to function as a statutory board with decision-making sometimes going all the way up to the parent ministry and the minister. This poses the next question of whether the structure is ideal? This is discussed in the following section. However, it is important to note that *waqf* institutions should be able to take risks in a proactive manner rather than continuing to adopt a traditional attitude towards risk, as innovation is an important part of development and deviates from the stagnant management styles.

9.2.2 The organisational structure of *waqf* institutions.

The prevailing *waqf* structure in Singapore was discussed in Chapter 4, which explains how the organisation of the *waqf* institution in Singapore is administered. Nevertheless, while the organisational structure is applauded by many countries, and a company to manage and develop *waqf*, it is still not the ideal structure as bureaucracy remains an important part, and to move forward and provide a quantum leap in the administration of *waqf* would be to delink totally Muis's role in the direct management of *waqf* assets and, therefore, only allow Muis to function in a purely regulatory role. In order to do this, a strong legislative framework must be put in place. Juxtaposing this with the way trusts are managed in Singapore is to have the same structural and legislative framework replicated in *waqf* management. For example, the Monetary Authority of Singapore (MAS) would only provide the regulatory framework for the trusts industry in Singapore. The MAS should be to protect and to promote more trusts to be established in Singapore. The same can be implemented for *waqf* where Muis can play a similar regulatory role as MAS, and let the market forces manage the organisation of *awqaf*. To go via this route means there must be stringent criteria in becoming a trustee. It is therefore recommended that trustees be appointed and that, more importantly assets are vested under a trustee. In this way, all decision-making will fall under the purview of trustees and they will be governed by the *waqf* Act which will be regulated by Muis. While this recommendation may solve the bureaucracy and inertia problems which exist in a government department, other problems may arise in ensuring trustees managed the *awqaf* with the integrity and professionalism required. In most trust cases, banks and financial institutions with strong organisational frameworks manage trusts. This recommendation also augurs well with the creation of new trusts. However in an existing trust where there is no trustee it will be treated the same as a public trust and this may still fall under the ambit and administration of Muis; or Muis can appoint trustees and vesting rights in the institution managing the *waqf*. However, it is important to state that the realisation of such a structure needs great political will and careful scrutiny of the legislation to be put in place.

9.2.3 Attitude towards *riba* and interest

During the interviews, there were still mixed views on this issue even at the highest level in deciding on *shari'ah* matters. The Islamic finance product is viewed with high degree of scepticism as it mimmicks the conventional system (El Gamal,2006). This view is also shaped due to the ignorance on the topic of interest or *riba*' or more so on the manner that financial institutions and banks structure *shari'ah*-compliant products. El-Gamal (2006: 190) commented that Islamic finance has created economic inefficiency as it increases the transaction costs of doing business. More importantly, it does not create any substantial economic values to the customers. This is definitely true. However, some argue that this is the cost of our compliance with the divine commands, as Muslims (El-Gamal, 2006). This attitude and the reasons for it may be justifiable in the manner Islamic financial products are presented. Nevertheless this has somehow hindered the motivation to use *shari'ah* compliant products.

However, this attitude does not prevail when it comes to a prohibition on say, the use of properties. There is a 100% consensus not to allow premises to be used for prohibited activities in Islam such as the sale of liquor. Some take an even more stringent view that *waqf* properties cannot function as hotels or service apartments as any prohibited activities cannot be cordoned off.

Therefore, in order to move towards a more *shari'ah*-compliant product for managing *waqf* assets, there should first be public education and training on the issues of Islamic finance and banking. Deciding on the *shari'ah* issues should be done at key personnel level that is by the *fatwa* committee whereby an opportunity space can be created for contemporary management of *waqf* assest. In other words, if the decision-makers are better educated on such issues, better informed decisions will be made. It is important to state that internal efforts must also be made to move away from interest-bearing transactions. Where possible, internal borrowings can be turned into a pure profit-sharing structure. This has been recommended earlier in the findings and analysis chapter. The prevailing perception among the *waqf* stakeholders in Singapore is that, Islamic banking being equal to the conventional banking, will lose its advocates if Islamic finance continue mimicking many of the conventional finance products. The need for reformation of the Islamic finance practices from *Shari'ah*-compliant financing to Islamic-based financing must be undertaken and proven for any shift in general perceptions to happen. Until such time, these perceptions will still remain. Therefore more products will need to be made available which are based purely on *shari'ah* principles and at the same time have an element of moral rectitude.

9.2.4 Lack of *shari'ah* compliant instruments in managing *waqf* assets

The other hurdles are therefore the availability of *shari'ah*-compliant instruments, which are currently limited in Singapore. For example, even if the *waqf* properties are covered by *takaful* insurance instead of conventional insurance, there is no available product for fire insurance under the *takaful* plan for *waqf* properties. Unless there is available *shari'ah*-compliant product there will be very limited participation in taking out a *takaful* plan if the pricing of such policies are non-competitive.

In addition, in terms of financial innovation, the proposal to create *waqf* REITs will cause problems, if there is limited *shari'ah* financing and limited short term placement of funds in REITs. However, this study strongly recommends that such products are created or made available.

9.3 Reflections and limitations of the research

In the course of preparing the thesis, there was a tendency to ask as many questions as there are needs to be addressed. This could have rendered the research to be out of focus; this same problem is inherent in the subject of *waqf*. However, due to *waqf* still being at the infancy stage in propagating the use of Islamic finance in its development and management, and even more so in respect of the limited managerial professionalism, the tendency to address related issues in order to carry out the financing and investment proposal cannot be disregarded.

In looking at the financing and investment needs of the *awqaf*, there are limited resources and case studies that can be consulted as there are too few *waqf* institutions to do this.

The idea of proposing *waqf*- REITs may be far-fetched for a country which views *waqf* in the strict traditional sense. After all, the institution of *waqf* should be religiously guarded so as not to allow it to be extinguished. If research is conducted on this premise, then there will be little innovation and creativity in proposing new and radical ideas. Ironically, these ideas may to some extent prolong the viability of the *waqf* assets which may prove to be pertinent after all. And it is this ingrained traditional and theological aspect of *awqaf* which has proved to have vast economic potential that has persuaded the researcher to venture into REITs.

The other limitation has been the lack of understanding of the operation of *waqf* and the legal and *shari'ah* issues engulfing *waqf* and integrating it with the Islamic finance issues that are presented in the questions. While the selected interviewees are people who are highly knowledgeable on *waqf* matters, there were still many gaps discovered when the interview were conducted. There were conflicting views especially when it came to *shari'ah* views and interpretation. Therefore, while the responses from the interviews are based on the majority's views, these views may not be conclusive; these limitations have been addressed in later discussion to give a balance perspective to the findings.

The major limitation to this research is that its approach to the management of its waqf assets has only been based on Singapore as the case study's approach to the management of its *waqf* assets. The views and the regulatory framework will suit well the Singapore environment. It may not be suitable for other countries to emulate. Further research is therefore necessary to look at how *awqaf* in other countries are managed.

The area of *waqf* is a very interesting area. The researcher finds that it is a form of social capital where capital is amassed for social benefit. It also mirrors an ethical capitalism form where the capital and usufruct of *waqf* are managed like a company to ensure profit and the preservation of the entity as a going concern. Properly managed and administered it forms the social and economic vehicle needed to fund the community. Considering that the new economic development policies and theory-making are very much oriented towards micro-dynamics through creating social capital and empowering individual and society, *waqf* is therefore essential for further development of the Muslim communities in Singapore and beyond.

The research has also limits its scope, where it does not go into the area of public education, accounting and taxation issues. However, only sparing remarks are made. The researcher is also aware of the importance of creating a conducive legal framework for *waqf* to thrive. It was mentioned earlier that changes and recommendations are needed in the current *waqf* legislation in Singapore.

There are currently few books and resources on the management of *waqf*. Hence empirical studies, conference materials and reports from the *waqf* institutions are an important source of documentation to understand the various authorities involved in the management of *waqf*. Many countries are still grappling with consolidating *waqf* assets. There are currently no annual reports by states which manage the *waqf* institutions, and where financial reports of each *waqf* appear. There may be some recent *waqf* funds where the accounts are properly reported but most are not. There is no completeness of record despite the fact that there are authorities responsible for the management of *waqf* assets. Countries like Singapore and Kuwait and probably countries with *Awqaf* Ministry, especially in the Middle-East where there is more regulated *waqf* reporting. Such reporting should be taken as a benchmark and be further developed.

Thus, as regards the available material, while there are many reports and references to compare how trusts are managed, the same cannot be said of *waqf* management.

There are also limited personnel involved in the management of *awqaf* which has contributed to their slow growth.

The most challenging part is trying to structure a waqf-REITs to ensure that it fits well with the characteristics of a *waqf*. That is the reason that the research has proposed a closed REITs instead of a publicly listed REITs as it does not want exposure to market speculation which is inherent in any publicly listed funds and shares. With a volatile market it is detrimental if the waqf-REITs becomes another avenue for speculative trading and lose its purpose as an endowment benefit.

9.4 Recommendations for further research

To give a bigger worldview further research is required to understand how *awqaf* are managed in some Muslims countries. However, since records cannot be found medium on-line or in print, a case-study approach needs to be undertaken for the various institutions. This will incur a substantial research budget and it will be time-consuming as there is a need to visit each institution that manages *awqaf* in these countries. With the evolution of the importance of *awqaf* in many Muslims countries, and with the project spearheaded by the Kuwait *Awqaf* in collating research, information and literature on *waqf*, hopefully there will be many references to cite in this research. With collaboration, cross-learning and the fertilisation of ideas and practices, this will hopefully bring about more development for the *waqf*.

Further research is needed in the various areas of *waqf*. The above financing mode of raising capital and reorganising *waqf* capital through REITs will need a further post-study research in order for it to be implemented successfully. Other areas which need to be further developed are the legal and investment framework.

One of the reasons for the underdevelopment of *waqf* assests is the inertia investment and financing activities pervasive in most *waqf* institution around the world. Although some attempts have been made to revive *awqaf* institutions, there are still many bolder moves needed from the authorities to propel the growth of *awqaf* institutions. Ahmed (2007)has purported the idea of using a *waqf*-based Islamic micro-financing institution to help the poor. There are *waqf*-based takaful initiated by the takaful industry in Malaysia. Financing development using *sukuk* has been attempted by the Islamic Religious Council of Singapore. There is evidence cited in chapter 3, where in some states the Islamic religious council has attempted the issuance of *waqf* shares, and financing them using *musharakah*, *mudharabah* and *ijarah* in its development of *waqf*. While progress is being made to research the financial needs and development of *awqaf*, the nearest comparison has to be the way trusts are managed and how investments are made. Further research is needed in the area of cash investments, for example in investment strategies, portfolio mandates in terms of asset allocation, benchmarking strategies and risk involved in managing *waqf* assets and or its cross border investment capabilities in *waqf*. *Waqf* borrowings were also projected through-out the case study and further research is needed too in this area as to the ideal amount that a *waqf* should borrow. To what extend can a *waqf* involve itself in mortgages? These are definitely new areas and data may prove to be difficult to obtain. Nevertheless, countries which are managing *awqaf* need to progress faster for development of these assets. Each country will have its own religious and unique investment and *shari'ah* rulings pertaining to *waqf*. An attempt has been made recently in the announcement from the Fiqh Academy to embrace the necessary changes in interpretating the *shari'ah* and legal rulings in *awqaf* so that more progress can be made to develop their assets, there is a need for more advanced management , financing and investment strategies to be developed in each *waqf* institution(Ahmed, 2007). These manuals can be shared among countries which do not have the resources to develop them.

While much has been said on the areas for enhancement of *waqf* assets from the viewpoint of the administrators, financiers, lawyers and *shari'ah* scholars the beneficiaries are also important stakeholders of which their views should also be sought in the development of *waqf* assets. Therefore further research to include this stakeholder viewpoint will give an enhanced and enriched view on the development of the *waqf* assets from the different lenses.

9.5 Epilogue

This research utilised a case-study approach to management, *shari'ah*, legal, and financing dimensions of *awqaf*. Primary data collection as the research method provided its empirical nature. The empirical nature of the study implies that it can be adopted for other *waqf* authorities globally to use and where possibly, some of the policy recommendations and the proposed structuring (CNA, 2007)[319]. Countries such as Brunei which has a majority Muslim population can learn from the systems, structures, the legal and *shari'ah* framework, policies and development strategies undertaken by Muis in order for them to design their own *waqf* institution which, currently, have not taken any form yet. Hence the additional value added nature of this study.

The research attempted to achieve its aim and objectives by answering the research questions set forth in the first chapter. On the factors needed for the successful management and administration of *waqf* assets? This question was answered in the empirical chapters where semi-structured interviews were conducted. The responses from the interviews revealed that the factors that contribute to the successful management of *waqf* assets must have the elements of innovation and creativity, highly talented and passionate people with strong leadership and great vision and a healthy attitude towards risk. In addition good governance and a legal framework with progressive fatwa and easy access to finance are important requisites.

The second research question concerned identifying gaps in the legal framework for managing *awqaf* and other contemporary issues in relation to the *fiqh* of *waqf* and how these could be addressed? The answers were based on the

[319] Channel News Asia reported by Daud Yusof on 1 Mar 2007 mentioned in the headline , 'Muis wants to export expertise on Islamic Endowment management overseas'. This was mentioned by the Waqf Conference co-Chairman, Shamsiah Abdul Karim from Muis where there are many waqf overseas assets which is in dire needs of development and Muis can partner with them to develop this waqf. Accessed via http://www.channelnewsasia.com. Dated 10th April 2010.

recommendations in Chapter eight where the gaps in the existing *waqf* act were identified and comparisons with the Trust act were drawn. The resultant proposals were related to contemporary issues related to the *fiqh* of *waqf* where the *shari'ah* issues were questioned. These included the permanent status of the assets, the perpetuity of *waqf,* and the need to have a dedicated legislation on *waqf.* While there are strong supporting fatwa from the *fiqh* academy that permit for a more interpretative judgements on endowment allowing a wider interpretation, the challenges is to overcome attitudes, the lack of knowledge and the dogmatic interpretation of some *fiqh.*

The third questions attempted to find out the investment objectives, guidelines for *waqf* assets and examine the sustainability of the *waqf* and its provision for the beneficiaries? These questions were answered in the thematic semi-structured interviews under the financing and investments of *waqf* assets. In order to create guidelines the formation of a *waqf* committee is imperative. Subsequently, it was found that the investment objectives and strategies for *waqf* should be safe and not risky, have capital preservation elements and be *shari'ah*-compliant while at the same time ensuring sustainability, provided that: the assets should predominantly be in property with a regular income and only a very small percentage in stocks and shares which are relatively safe and secure.

The fourth research questions attempted to discover the *shari'ah* issues that may hamper the growth of *waqf* assets. The answer to this question came from the literature review and the semi-structured interviews. The questions were crafted to relate *shari'ah* to issues pertinent to *waqf* assets. The responses are shown in Table 9.1.

Table 9.1: Summary of responses from the semi-structured interviews

Questions	Answers from the semi-structured interview
Should *waqf* have permanency features?	*Waqf* should be permanent and perpetual
What are the issues in *istibdal* and in what circumstances can it be used?	*Istibdal* is allowed as long as it is for the good of the *waqf* but *ibdal* is not recommended.
Are *waqf* allowed to enter long leases such as a 99-year lease?	Generally 99-year leases are allowed as long as there are measures to ensure that the property is not lost.
Are *waqf* allowed to borrow?	Generally *waqf* are allowed to borrow but there should not be undue risk posed to the *waqf*
Must the *waqf* assets be dealt with in a *shari'ah*-compliant manner?	*Waqf* assets are to be dealt in a *shari'ah*-compliant manner however, on the issue of *halal* or *haram* activities, there are differences in opinion as to what is halal and haram.
What is your opinion on non-Muslims creating *waqf*?	Generally there is no issue in *shari'ah*. However, the issue is whether it is appropriate to be implemented in Singapore
Should Muis manage *waqf Ahli* as other countries have ceased to manage *waqf Ahli*?	Muis should manage *waqf Ahli* as well.

The fifth research question attempted to discover the methods used in the financing of *waqf* assets and how the problem of limited *shari'ah*-compliance in the development of *waqf* assets is overcome? In an attempt to answer this question case study approach was adopted. It used the examples for the development of *waqf* assets which were presented in Chapter three. These includes financing through a long lease, *musharakah*, *mudharabah*, *ijarah*, *sukuk al-intifa'a*, *sukuk musharakah* and *waqf shares* Chapter three, also highlighted the various financing modes used by the three Malaysian states. The *waqf* authority has embraced the use of more methods in financing *waqf* assets, and to overcome the problem of limited structures available now, further innovation in the financing of *waqf* assets is needed. This has therefore led the research to propose the structuring of *waqf* – REITs as an alternative and contemporary method for financing, investing and managing *waqf* assets.

The sixth research questions concerned the problems faced in structuring a *waqf*-REITs. Based on the semi-structured interviews the following problems emerged: It may need a large pool of quality assets, it does not have tax advantage status; there will be problems on ownership, control and the availability of a *shari'ah* compliant investment structure.

The last research question pertains to the attitudes of the stakeholders in carrying out these innovative ideas. These were discussed in the earlier part of this chapter on the attitudes of risk taking and dealing with non-*shari'ah* compliant product. The findings revealed the risk-adverse attitude which is expected for a statutory board settings.

For Muis, the authority for managing *waqf* assets in Singapore, this research has also revealed the gaps and the inadequacy in some of its policies, on legal and *shari'ah* requirements to generate further growth in *waqf* assets. It has also deconstructed the *shari'ah* views and provided alternative views and challenge to the traditional ways of managing a *waqf.* This is also in line with the decision taken by the International Council of *Fiqh* Academy, where it recommends governments and *Shari'ah* councils in Muslim countries to adopt its recommendation of allowing many of the contentious issues such as not recognising temporal *waqf* to recognise such characteristics as *waqf.* Their view of *ijtihadi* laws, is that the law on *waqf* should be flexible enough to allow it to flourish and attain the *shari'ah* objectives of upholding the interest of the *waqif* and the beneficiaries. In so doing, the research supports the legislation in other countries and uses the example of Selangor (of Malaysia) legislation to juxtapose the inadequacy of the legal provisions currently available in the AMLA, thus allowing an insight on how to improve, add or change the current *waqf* legislation.

Based on discursive and empirical research, this study has provided recommendations pertaining to the Singapore *waqf* and advocates that they are put forth to bring the *waqf* management and financing issues to the next level of professionalism, without compromising on any religious requisite with the objective of responding to the growing demand for the role *waqf* can play in the society.

When more of the *waqf* authorities are able to adopt some of these changes and move towards better management of their *waqf* funds, it is hoped that through Kuran's criticism (Summer, 2004) many factors for the underdevelopment of *waqf* can be negated for better and dynamic *waqf* structures so that they can fulfil their social capital role better.

It should also be mentioned that some of the issues raised and recommendations made in this study may be found innovative by the current *waqf* managers. Therefore, due to traditional attitudes, such recommendations may be looked at with scepticism. However, whether there is a political will or not, the issue remains that *awqaf* should be able to move into a more dynamic structure and move away from the stagnation nature, which Kuran (2004) rightly criticises.

9.6 Concluding remarks

Based on the study, there is indeed great potential for *awqaf* to evolve towards the management of trust, as the research has identified not only strengths but gaps in the administration, management and development of *waqf*. The case-study approach coupled with the semi-structured interview and the resources obtained from the *waqf* authorities in different countries has enabled this research to give an in-depth insight into the management of *waqf*. A comprehensive study on the *waqf* management in Singapore has been done and a whole new spectra of how and what it can contribute to the further development of *waqf* assets is revealed.

The policy recommendations discussed in Chapter eight, it is hoped, will enhance and strengthen the management of *waqf*. For the *waqif* or the testator who creates a *waqf*, it is imperative that he or she feels satisfied that the *waqf* will be professionally managed even after his or her lifetime. Hence this is where corporate governance, good regulations and a sound legal framework is necessary to ensure that the assets are being managed and protected, the beneficiaries' and *waqif's* needs are being upheld. Without good and clear regulations, laws and policies, these objectives cannot be achieved and therefore faith in the institution will be eroded if there is no strong foundation on which to build an institution.

The research proposes the structure of REITs in managing *waqf* assets in an untraditional manner. However, this can only be done if the regulatory framework and the *shari'ah* interpretations are able to support the structure especially if it touches on sensitive issues. While a REITs can monetize a *waqf's* assets, it can also allow individuals with small amounts of capital to participate in the creation of *waqf* through the purchase of property. This initiative will unlock the potential of *waqf* and provide a new vehicle for owning *waqf* properties. While the ultimate aim is for the *waqif* to achieve the blessing of God, it has also created ethical capitalism and has allowed the Muslim community to expand its assets and provide the income necessary for the many needs of the Muslim community. The Muslim community faces many challenges in Singapore, one of which is the social challenge of low incomes. The programs that have been carried out and the resources that have been channelled are inadequate to tackle this problem. Therefore while the thesis is not designed to prove the hypothesis that *waqf* can help alleviate these problems, the potential highlighted by this research proves that it can be a powerful institution where it provides the financial resource to alleviate this problem.

A deliberate effort by *waqf* institutions to help the community to give towards a certain cause can also be channelled. It is an opportune time to seriously look into the institution of *waqf* and allow it to flourish and make the necessary contribution to the community.

Based on the above research, a holistic approach to enhance the institution is needed to re-establish the glorified era it used to provide.

There is already the World *Waqf* Foundation established by IDB.[320] It aims to position *waqf* as an institution to alleviate poverty and to spur development in poor countries and has taken small steps to address these issues. There are many rich philanthropists and middle-class Muslims who wish to *waqf* and would welcome a new approach in the management of *waqf*. This calls for bold movement and creativity by the authorities who manage *waqf*. *Waqf* is essentially an asset management institution, and so a professional asset management team must be established to realise this potential.

It is hoped that this research will pave the way for more research in this field and help realise *waqf* as the vehicle for financing the society (Hodgson, 1974).

[320] See footnote 48 in Chapter 2.

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Appendix 1

Muis Organisation Chart